

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF WISCONSIN

3  
4 COMMODITY FUTURES TRADING

5 COMMISSION,

6 Plaintiff,

7 v.

Civil Action No.

8 EDWARD S. WALCZAK,

20 Civ. 75 (WMC) (SLC)

9 Defendant.

10  
11 VIDEOTAPED DEPOSITION OF

12 EDWARD S. WALCZAK

13 DATE: Tuesday, May 18, 2021

14 TIME: 8:30 a.m.

15 LOCATION: Remote Proceeding

16 Washington, DC 20005

17 REPORTED BY: Carl Hellandsjo, Notary Public

18 JOB No.: 4530392

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<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFF COMMODITY FUTURES TRADING</p> <p>3 COMMISSION:</p> <p>4 SAMUEL MR. WASSERMAN, ESQUIRE (by</p> <p>5 videoconference)</p> <p>6 Commodity Futures Trading Commission (CFTC)</p> <p>7 140 Broadway, 19th Floor</p> <p>8 New York, NY 10005</p> <p>9 swasserman@cftc.gov</p> <p>10 (646) 746-9802</p> <p>11</p> <p>12 CANDICE ALOISI, ESQUIRE (by videoconference)</p> <p>13 Commodity Futures Trading Commission (CFTC)</p> <p>14 140 Broadway, 19th Floor</p> <p>15 New York, NY 10005</p> <p>16 caloisi@cftc.gov</p> <p>17</p> <p>18 PETER JANOWSKI, ESQUIRE (by videoconference)</p> <p>19 Commodity Futures Trading Commission (CFTC)</p> <p>20 140 Broadway, 19th Floor</p> <p>21 New York, NY 10005</p> <p>22 pjanowski@cftc.gov</p>	<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2 ALSO PRESENT:</p> <p>3 Orson Braithwaite, Videographer (by</p> <p>4 videoconference)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2 ON BEHALF OF DEFENDANT EDWARD S. WALCZAK:</p> <p>3 JAMES L. KOPECKY, ESQUIRE (by videoconference)</p> <p>4 Kopecky Schumacher Rosenberg LLC</p> <p>5 120 North LaSalle Street, Suite 2000</p> <p>6 Chicago, IL 60602</p> <p>7 jkopecky@ksrlaw.com</p> <p>8 (312) 380-6633</p> <p>9</p> <p>10 ZACHARY ZILIAK, ESQUIRE (by videoconference)</p> <p>11 Ziliak Law, LLC</p> <p>12 71 South Wacker Drive</p> <p>13 Chicago, IL 60606</p> <p>14 zachary@ziliak.com</p> <p>15</p> <p>16 STEVEN BYLINA III, ESQUIRE (by videoconference)</p> <p>17 Ziliak Law, LLC</p> <p>18 141 West Jackson Boulevard, Suite 4048</p> <p>19 Chicago, IL 60604</p> <p>20 sbylina@ziliak.com</p> <p>21</p> <p>22</p>	<p>1 I N D E X</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Wasserman 11</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6 NO. DESCRIPTION PAGE</p> <p>7 MARKED</p> <p>8 Exhibit 1 E-mail, 11/19/2014; Bates No.</p> <p>9 SEC_04_0369122 14</p> <p>10 Exhibit 2 Spreadsheet, "Hedged Futures</p> <p>11 Strategy Fund Risk Guidelines" 14</p> <p>12 Exhibit 3 E-mail, 12/22/2014; Bates No.</p> <p>13 SEC_04_0357587 25</p> <p>14 Exhibit 4 Hedged Futures Strategy Fund Risk</p> <p>15 Guidelines, 12/2014; Bates No.</p> <p>16 SEC_04_0357600 25</p> <p>17 Exhibit 5 E-mail, 1/20/2015 33</p> <p>18 Exhibit 6 Fund Trading Procedures;</p> <p>19 Bates No. CFTC3_00024271 33</p> <p>20 Exhibit 7 E-mail, 5/20/2015; Bates No.</p> <p>21 CFTC3_00023342 38</p> <p>22</p>

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<p>1 PROCEEDINGS</p> <p>2 VIDEOGRAPHER: Good morning. We are</p> <p>3 going on the record at 8:30 a.m. on May 18, 2021.</p> <p>4 This is Media Unit 1 of the remote recorded deposition</p> <p>5 of Mr. Edward Walczak in the matter of Commodity</p> <p>6 Futures Trading Commission vs. Edward S. Walczak filed</p> <p>7 in the United States District Court, Western District</p> <p>8 of Wisconsin, Case No. 20 Civ. 75 (WMC)(SLC).</p> <p>9 My name is Orson Braithwaite from the</p> <p>10 firm Veritext Legal Solutions, and I'm the</p> <p>11 videographer. The court reporter is Carl Hellandsjo,</p> <p>12 from the firm Veritext Legal Solutions.</p> <p>13 Counsel will now state their</p> <p>14 appearances and affiliations for the record.</p> <p>15 MR. WASSERMAN: This is Sam Wasserman</p> <p>16 on behalf of the Commodity Futures Trading Commission.</p> <p>17 Why don't the rest of the CFTC state</p> <p>18 their name for the record, and then defense counsel.</p> <p>19 MS. ALOISI: Hi. This is Candice</p> <p>20 Aloisi with the Commodity Futures Trading Commission.</p> <p>21 MR. JANOWSKI: And this is Peter</p> <p>22 Janowski, also with the Commodity Futures Trading</p>	<p>1 Q And just a few preliminary administrative</p> <p>2 issues before we get into the questions.</p> <p>3 Mr. Walczak, do you understand that you are</p> <p>4 under oath today?</p> <p>5 A I do.</p> <p>6 Q And do you understand and agree that that</p> <p>7 oath is valid and binding notwithstanding the fact</p> <p>8 that you and other participants are appearing remotely</p> <p>9 today?</p> <p>10 A I do. I understand.</p> <p>11 Q Okay. Can you confirm whether there's</p> <p>12 anyone else in the room with you where you are?</p> <p>13 A There is no one else in the room with me.</p> <p>14 Q Okay. As if we were in the room together,</p> <p>15 do you understand that you are not to confer with your</p> <p>16 counsel or anyone else during the questioning whether</p> <p>17 by text, IM, or other communication?</p> <p>18 A I understand.</p> <p>19 Q If there's no question pending and you would</p> <p>20 like to take a break to confer with counsel, you can</p> <p>21 ask me. And I'll decide whether we can go off the</p> <p>22 record. And if we go off the record, then you may</p>
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<p>1 Commission.</p> <p>2 MR. KOPECKY: Yes. Jim Kopecky for</p> <p>3 defendant, Ed Walczak.</p> <p>4 MR. ZILIAK: Zach Ziliak, also for the</p> <p>5 defendant, Ed Walczak.</p> <p>6 MR. BYLINA: And Steve Bylina on behalf</p> <p>7 of defendant Ed Walczak.</p> <p>8 VIDEOGRAPHER: Thank you. Will the</p> <p>9 court reporter please swear in the witness.</p> <p>10 REPORTER: Yes. Please raise your</p> <p>11 right hand.</p> <p>12 WHEREUPON,</p> <p>13 EDWARD S. WALCZAK,</p> <p>14 called as a witness, and having been first duly sworn</p> <p>15 to tell the truth, the whole truth and nothing but the</p> <p>16 truth, was examined and testified as follows:</p> <p>17 REPORTER: Thank you.</p> <p>18 EXAMINATION</p> <p>19 BY MR. WASSERMAN:</p> <p>20 Q Thank you, Mr. Walczak. Can you please</p> <p>21 state and spell your name for the record?</p> <p>22 A Edward Walczak. E-D-W-A-R-D W-A-L-C-Z-A-K.</p>	<p>1 confer with counsel over the phone.</p> <p>2 This deposition is being videorecorded by</p> <p>3 Veritext, but I would also ask you and your counsel to</p> <p>4 confirm that there's no other audio or visual</p> <p>5 recording being made of the testimony here today.</p> <p>6 MR. KOPECKY: There is not.</p> <p>7 A There is not, on my end.</p> <p>8 Q Thank you. Okay, Mr. Walczak. So if you</p> <p>9 give me a moment. I know we've spent some time</p> <p>10 together before, so we don't need to go through a lot</p> <p>11 of the background stuff that we would ordinarily go</p> <p>12 through.</p> <p>13 MR. WASSERMAN: So I'm just going to</p> <p>14 introduce Exhibit No. 1, which is -- it's actually</p> <p>15 going to be Exhibit 1 and 2.</p> <p>16 One is going to be a document Bates</p> <p>17 stamped SEC_04_0369122. If you give me a moment.</p> <p>18 And Exhibit 2 is going to be an</p> <p>19 attachment to that e-mail SEC_04-0369123. Exhibit No.</p> <p>20 2 is an Excel file, so there's not going to be a stamp</p> <p>21 on the document. But it will be marked in the file</p> <p>22 name.</p>

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<p>1 (Exhibits 1 and 2 were marked for</p> <p>2 identification.)</p> <p>3 BY MR. WASSERMAN:</p> <p>4 Q Mr. Walczak, are you able to see those two</p> <p>5 documents?</p> <p>6 A Is there an action I need to take within the</p> <p>7 software? I don't see anything.</p> <p>8 Q You don't see anything?</p> <p>9 A I see a folder that's empty, as I did when I</p> <p>10 logged in, so.</p> <p>11 Q Yes. Can you press "Refresh"?</p> <p>12 A All right. I'll do that. All right. I see</p> <p>13 a PDF and an Excel file.</p> <p>14 Q Yes. Can you open those two documents,</p> <p>15 please?</p> <p>16 A I have the PDF open. And I'm not certain I</p> <p>17 can open the other one at the same time. Let me find</p> <p>18 that -- find out if I can. All right. It looks to me</p> <p>19 like I've only got one open at a time.</p> <p>20 Q Okay. So you're going to have to download</p> <p>21 it off the browser to be able to see both at once.</p> <p>22 A All right.</p>	<p>1 A That is what it says in the top of the e-</p> <p>2 mail. Yes.</p> <p>3 Q Okay. And who is George Amrhein?</p> <p>4 A George Amrhein was affiliated with Catalyst.</p> <p>5 I don't recall his employment status, but he was</p> <p>6 affiliated with Catalyst.</p> <p>7 Q Okay. At this time, in or around November</p> <p>8 of 2014, do you recall what his role was?</p> <p>9 A No.</p> <p>10 Q Okay. The e-mail indicates that you write</p> <p>11 to George and say "Attached is a first run at a risk</p> <p>12 management template." Do you see that?</p> <p>13 A Yes, I see that.</p> <p>14 Q What does that mean to you?</p> <p>15 A I -- I don't recall this e-mail.</p> <p>16 Q Okay. Does the Excel file attached to the</p> <p>17 e-mail look familiar to you?</p> <p>18 A Let me pull that up. The -- the content</p> <p>19 looks familiar. I don't recall this particular file.</p> <p>20 No.</p> <p>21 Q Okay. If you click on the "File" tab on the</p> <p>22 top left of the e-mail --</p>
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<p>1 MR. KOPECKY: Right-hand corner of the</p> <p>2 screen, Ed. Up in the right-hand corner it should</p> <p>3 show "Download" with a --</p> <p>4 THE WITNESS: There's -- yeah. There's</p> <p>5 actually a download icon next to the Excel file, so</p> <p>6 I'll use that.</p> <p>7 MR. KOPECKY: Perfect.</p> <p>8 MR. WASSERMAN: That makes sense.</p> <p>9 THE WITNESS: All right. So the Excel</p> <p>10 file is open.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q Okay. If you could take a minute to review</p> <p>13 both, and then I'll ask some questions, first, about</p> <p>14 the PDF.</p> <p>15 A All right. I see the PDF.</p> <p>16 Q Okay. What is this document?</p> <p>17 A Looks like an e-mail.</p> <p>18 Q From you to George Amrhein; is that right?</p> <p>19 A That's what it says in -- at the top of the</p> <p>20 e-mail. Yes.</p> <p>21 Q Okay. It appears to be dated November 19,</p> <p>22 2014, at 7:23 p.m.; correct?</p>	<p>1 A Okay.</p> <p>2 Q -- there's the screen that says "Info."</p> <p>3 A So I only see -- so I have an Excel file.</p> <p>4 It has a "Sheet1," and I'm looking at one, two, three,</p> <p>5 four, five columns of information. It's titled Hedged</p> <p>6 Futures Strategy Fund Risk Guidelines. I don't see</p> <p>7 any other tabs.</p> <p>8 Q I understand Mr. Walczak. On the top, do</p> <p>9 you see where it says "File," "Home," "Insert," "Page</p> <p>10 Layout"?</p> <p>11 A Yep.</p> <p>12 Q Okay. Click "File."</p> <p>13 A All right.</p> <p>14 Q Okay. On the right-hand side, do you see</p> <p>15 "Properties," "Related Dates," and "Related People"?</p> <p>16 A I do not.</p> <p>17 Q Okay. I'm going to share my screen with</p> <p>18 you.</p> <p>19 A Okay. I mean, my -- this file's open --</p> <p>20 I -- it looks like in my Excel software on my</p> <p>21 computer.</p> <p>22 Q Yes. I understand.</p>

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<p>1 A Okay.</p> <p>2 Q Do you see my screen right now, Mr. Walczak?</p> <p>3 A Yes.</p> <p>4 Q Can you see if the screen says the file name</p> <p>5 at the top is SEC_04_0369123?</p> <p>6 A Yes.</p> <p>7 Q Okay. And you see, on the right-hand side,</p> <p>8 "Related People," "Author," and it says your name?</p> <p>9 A Yes.</p> <p>10 Q Okay. And do you see the date created and</p> <p>11 modified are both 11/19/2014?</p> <p>12 A Yes.</p> <p>13 Q Okay. Did you create this document, Mr.</p> <p>14 Walczak?</p> <p>15 A Honestly, I don't remember. It -- it's</p> <p>16 seven years ago.</p> <p>17 Q I understand.</p> <p>18 A It certainly -- it certainly looks like</p> <p>19 something I could have created.</p> <p>20 Q Okay. Walk us through this document and</p> <p>21 what it means.</p> <p>22 A Well, again, I -- I, you know, I just told</p>	<p>1 parameters following a drawdown on the Harbor Fund to</p> <p>2 try to identify ways to mitigate future drawdowns.</p> <p>3 And -- and they involved some of the</p> <p>4 concepts I see on this page.</p> <p>5 Q Okay. Were the operating parameters that</p> <p>6 you used for Harbor written down anywhere?</p> <p>7 A I -- I think they were. Again, it was a</p> <p>8 long time ago. I don't remember for sure.</p> <p>9 I did do a lot of stuff in my head, but they</p> <p>10 may have been written down. Like I said, I -- I don't</p> <p>11 recognize this particular format. Don't know if I</p> <p>12 used Excel; don't know if it was a yellow pad of</p> <p>13 paper; don't know if it was in my head.</p> <p>14 But I -- I had ground rules that I follow.</p> <p>15 Q Okay. The Hedged Futures Strategy Fund</p> <p>16 started in September of 2013; correct?</p> <p>17 A Yes.</p> <p>18 Q So from September 2013 through November 19th</p> <p>19 of 2014, were there any written risk guidelines for</p> <p>20 the Hedged Futures Strategy Fund?</p> <p>21 A Again, I -- I don't remember. I -- I</p> <p>22 continued to operate the mutual fund in the same</p>
Page 19	Page 21
<p>1 you I don't remember this specific document. So I</p> <p>2 don't want to guess at -- at this stuff.</p> <p>3 I mean, it, you know -- again, I can</p> <p>4 speculate on what it means. That -- the concepts are</p> <p>5 things I've seen before. I'm not sure if you want me</p> <p>6 to speculate on what it means.</p> <p>7 Q Well, do you recall creating a set of Risk</p> <p>8 Guidelines for the Catalyst Futures Hedged Strategy</p> <p>9 Fund in late 2014?</p> <p>10 A Yeah, I -- I recall sending Catalyst some of</p> <p>11 the operating guidelines I've used for my strategy</p> <p>12 before joining Catalyst, before converting to the</p> <p>13 mutual fund. Yes.</p> <p>14 Q Okay. Did this document exist in some form</p> <p>15 prior to November 19th of 2014?</p> <p>16 A You know, I honestly don't remember. I -- I</p> <p>17 had operating parameters for -- for the Harbor Fund</p> <p>18 predecessor. I don't remember what form they took.</p> <p>19 But I did have similar operating parameters.</p> <p>20 Q And when you say "similar operating</p> <p>21 parameters" for the Harbor Fund, what do you mean?</p> <p>22 A Well, what I mean is I -- I created some</p>	<p>1 manner as I operated the predecessor fund.</p> <p>2 So my previous answer applies or -- or</p> <p>3 applies. I just don't remember to what degree I had</p> <p>4 thing written down or not written down.</p> <p>5 Q Were there risk guidelines at all for the</p> <p>6 Hedged Futures Strategy Fund prior to November 19th of</p> <p>7 2014?</p> <p>8 A Well, yeah. I -- I did use operating</p> <p>9 parameters, prior. Like I mentioned, I think the</p> <p>10 drawdown -- the drawdown was in 2007, and that's when</p> <p>11 I decided to put in place some -- some more objective</p> <p>12 operating parameters.</p> <p>13 But as I said, I -- I just don't remember</p> <p>14 the -- the full, you know -- that was 2007, 14 years</p> <p>15 ago. I don't remember the specific evolution of those</p> <p>16 guidelines; where, when, how they were written down.</p> <p>17 But -- but I did use guidelines.</p> <p>18 Q Okay. So my question was specifically about</p> <p>19 September of 2013 through November 19th of 2014. And</p> <p>20 specifically, whether there were any risk guidelines</p> <p>21 that you applied to the Hedged Futures Strategy Fund.</p> <p>22 A I used -- as I said, I -- I managed the --</p>

<p style="text-align: right;">Page 22</p> <p>1 the mutual fund in the same way I managed the hedge</p> <p>2 fund. So nothing really changed in how I managed the</p> <p>3 portfolio immediately on that, you know, August 31st</p> <p>4 to September 1st. It wasn't -- I don't recall, at</p> <p>5 least, that I did anything different.</p> <p>6 Q Okay. What were the risk guidelines that</p> <p>7 you used for the Hedged Futures Strategy Fund from</p> <p>8 September 2013 to November 2014?</p> <p>9 A I -- I don't recall the specifics. They do</p> <p>10 evolve over time. And I -- I really, very honestly,</p> <p>11 don't recall which ones, which levels, or the detail</p> <p>12 behind those parameters.</p> <p>13 Q And you don't recall whether they were</p> <p>14 written down or not?</p> <p>15 A Exactly.</p> <p>16 Q One moment, please. Can you recall any</p> <p>17 specific parameter, written or nonwritten, that you</p> <p>18 applied to the Hedged Futures Strategy Fund from</p> <p>19 September 2013 through November 2014?</p> <p>20 A Well, I remember, I mean, I -- I do remember</p> <p>21 using position guidelines, meaning numbers of</p> <p>22 positions. I used open option premium dollars. Those</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Where did you get the information to</p> <p>2 calculate that guideline?</p> <p>3 A I could get a reasonable approximation from</p> <p>4 my software. And I would periodically double-check</p> <p>5 that against settlement prices on brokerage</p> <p>6 statements.</p> <p>7 Q Okay. And how did you calculate, if you</p> <p>8 did, any position limits guideline during that period?</p> <p>9 A Again, I could -- I -- I looked both at my</p> <p>10 software and brokerage statement to see the numbers of</p> <p>11 open positions I had.</p> <p>12 Q What software are you referring to?</p> <p>13 A OptionVue.</p> <p>14 Q Okay. And that's O-P-T-I-O-N-V-U-E?</p> <p>15 A Yes. I think so.</p> <p>16 Q Just for the record. Thank you.</p> <p>17 Did you make the open options premium</p> <p>18 calculation in writing or in your head during the</p> <p>19 September 2013 to November 2014 period?</p> <p>20 A Don't know for sure. I certainly did a lot</p> <p>21 of the calculations in my head. It's a habit of mine.</p> <p>22 Q Okay. What about the calculation for</p>
<p style="text-align: right;">Page 23</p> <p>1 are the two that I remember specifically. I -- I --</p> <p>2 yeah. They stick out in my mind.</p> <p>3 Q Anything else?</p> <p>4 A Those are the two I remember.</p> <p>5 Q Okay. From September 2013 to November 2014,</p> <p>6 how did you calculate -- or, sorry -- before I ask</p> <p>7 that -- strike that.</p> <p>8 From September 2013 to November 2014, what</p> <p>9 exactly was the position limits risk guideline?</p> <p>10 A I -- I'm sorry to be repetitive, but I -- I</p> <p>11 just don't remember.</p> <p>12 Q From September 2013 to November 2014, what</p> <p>13 was the open options premium guideline?</p> <p>14 A I also don't recall, specifically, what it</p> <p>15 was then.</p> <p>16 Q Do you recall how you calculated the open</p> <p>17 options premium guideline --</p> <p>18 A Yeah. It's --</p> <p>19 Q -- during that period?</p> <p>20 A It -- it -- the open option premium was a</p> <p>21 mark to market calculation of the value of the open</p> <p>22 positions.</p>	<p style="text-align: right;">Page 25</p> <p>1 position limits?</p> <p>2 A The -- the same. I, you know, there --</p> <p>3 there were certainly -- it -- it was likely there were</p> <p>4 times I wrote something on a yellow pad. A lot of</p> <p>5 times I do it in my head.</p> <p>6 Q Okay. Give me one moment. I'm going to put</p> <p>7 up another exhibit. Okay, Mr. Walczak, if you could</p> <p>8 refresh your Exhibits folder again, please.</p> <p>9 A Get rid of the Excel file real quick, and</p> <p>10 then -- let's see. All right. I see two new PDF</p> <p>11 exhibits.</p> <p>12 Q Yes. Exhibit 3 is Bates stamped</p> <p>13 SEC_04_0357587, and Exhibit 4 is stamped</p> <p>14 SEC_04_0357600.</p> <p>15 (Exhibits 3 and 4 were marked for</p> <p>16 identification.)</p> <p>17 A I see those.</p> <p>18 Q And Exhibit 4 is the attachment to Exhibit</p> <p>19 3. Mr. Walczak, could you take a moment to review</p> <p>20 Exhibit 3, please.</p> <p>21 A All right. I see it.</p> <p>22 Q Okay. And could you also take a moment to</p>



<p style="text-align: right;">Page 26</p> <p>1 review Exhibit 4?</p> <p>2 A Okay. Got it.</p> <p>3 Q Going back to Exhibit 3, which appears to be</p> <p>4 an e-mail from Jerry Szilagyi, the CEO of Catalyst;</p> <p>5 correct?</p> <p>6 A I agree that's how it appears.</p> <p>7 Q And it's to somebody named Arun Kumar. Do</p> <p>8 you know who that is?</p> <p>9 A I remember Arun. I don't recall exactly who</p> <p>10 he is. But I do admit to having met him.</p> <p>11 Q What do you remember about Arun?</p> <p>12 A He -- he was some point of contact that</p> <p>13 Jerry and I met. I don't remember his position or</p> <p>14 even who he worked for.</p> <p>15 It's probably on here somewhere. But he</p> <p>16 was -- yeah. I -- he was somebody at -- well, you</p> <p>17 know, I honestly -- I can't say what organization.</p> <p>18 I'm not seeing it in the e-mail.</p> <p>19 But somebody we had to meet involved in</p> <p>20 distributing the fund, I think, I guess.</p> <p>21 Q What do you mean "involved in distributing</p> <p>22 the fund"?</p>	<p style="text-align: right;">Page 28</p> <p>1 fund. That's all I remember.</p> <p>2 Q Okay. Do you recall meeting with Mr. Kumar</p> <p>3 in October of 2014?</p> <p>4 A I don't recall anything about the -- the</p> <p>5 specific dates on which I met him. I do recall</p> <p>6 meeting him.</p> <p>7 Q Do you recall meeting him at some point in</p> <p>8 the fall of 2014?</p> <p>9 A I don't -- again, I don't remember time</p> <p>10 frames. I -- I can tell you the -- the best of my</p> <p>11 recollection I met him more than once. And I don't</p> <p>12 remember a whole heck of a lot about the meetings.</p> <p>13 Q What do you remember from your first meeting</p> <p>14 with him?</p> <p>15 A I remember I was with Jerry. And I remember</p> <p>16 that he asked questions about the fund.</p> <p>17 Q Okay. Where was the meeting?</p> <p>18 A I think that first meeting was in New York.</p> <p>19 Q What was the purpose of that meeting?</p> <p>20 A Don't remember.</p> <p>21 Q Was it to inform Mr. Kumar about the Hedged</p> <p>22 Futures Strategy Fund?</p>
<p style="text-align: right;">Page 27</p> <p>1 A Well, I -- honestly, I don't know what I</p> <p>2 mean. I'm just trying to give you my -- my sense.</p> <p>3 You're asking me who he was. I honestly don't know</p> <p>4 'cause I don't -- yeah.</p> <p>5 Q Mr. Walczak, Arun Kumar works for UBS;</p> <p>6 right?</p> <p>7 A I -- again, I -- I looked. I didn't see it</p> <p>8 immediately. I don't remember.</p> <p>9 I see it now.</p> <p>10 Q Haven't you --</p> <p>11 A There. I see his -- yeah. I see UBS on it.</p> <p>12 I missed --</p> <p>13 Q You've had several substantive meetings,</p> <p>14 including at least one in person, with Arun Kumar;</p> <p>15 right?</p> <p>16 A Yes.</p> <p>17 Q Okay. So you know who he is.</p> <p>18 A Well, no. No. Mr. Wasserman, I -- I don't</p> <p>19 remember. I don't take interest, honestly, in this</p> <p>20 end of the business.</p> <p>21 And I remember Arun. I remember he did</p> <p>22 something for somebody involved in distribution of the</p>	<p style="text-align: right;">Page 29</p> <p>1 A Previous response still applies. I don't</p> <p>2 remember.</p> <p>3 Q Okay. Do you remember who else was at the</p> <p>4 meeting besides Mr. Szilagyi and yourself and Mr.</p> <p>5 Kumar?</p> <p>6 A Those are the only ones I remember.</p> <p>7 Q Turn your attention to -- sorry. One more</p> <p>8 question.</p> <p>9 In October of 2014, did the Catalyst Hedged</p> <p>10 Futures Strategy Fund have an office outside of your</p> <p>11 home?</p> <p>12 A I don't think so.</p> <p>13 Q Okay. Did Catalyst, at some point soon</p> <p>14 after this meeting with Mr. Kumar, obtain office</p> <p>15 space?</p> <p>16 I'm sorry, did the Hedged Futures Strategy</p> <p>17 Fund, at some point after this meeting, obtain office</p> <p>18 space?</p> <p>19 A We certainly obtained office space. Once</p> <p>20 again, without a lease contract in front of me, I</p> <p>21 don't remember when.</p> <p>22 Q Okay. Turn your attention to Exhibit 3 and</p>



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<p>1 to the bottom of the third paragraph.</p> <p>2 Mr. Szilagyi says "Also attached are the</p> <p>3 risk management guidelines for HFXAX that George</p> <p>4 reviews daily." Do you see that?</p> <p>5 A I do.</p> <p>6 Q Do you know whether, at this point in time,</p> <p>7 on December 22, 2014, Mr. Amrhein was actually</p> <p>8 reviewing any risk management guidelines daily?</p> <p>9 A No. I have no idea what he was doing daily.</p> <p>10 Q Okay. The attachment to this e-mail,</p> <p>11 though, Exhibit 4, do you recognize that?</p> <p>12 A Not this specific document. It does look</p> <p>13 like the beginnings of what -- what George put</p> <p>14 together for risk guidelines.</p> <p>15 Q What do you mean "what George put together"?</p> <p>16 A Well, I'm -- I'm guessing this was -- well,</p> <p>17 all right. What -- what I remember is he asked me for</p> <p>18 some of my operating parameters in the Fund. I -- I</p> <p>19 gave them to him.</p> <p>20 And he, I think -- well, I don't know what</p> <p>21 he did with them. But he, I think, tried to construct</p> <p>22 a -- a risk matrix out of what I gave him.</p>	<p>1 Q Okay. And Exhibit 4 incorporates the</p> <p>2 parameters you drafted in Exhibit 2; right?</p> <p>3 A Well, let me go look at Exhibit 4 again.</p> <p>4 Yeah. I mean, it looks -- if I compare the two</p> <p>5 documents -- not easy to do between the two files --</p> <p>6 but it -- they look like they certainly grabbed some</p> <p>7 of what I had or all of what I had.</p> <p>8 Q Okay. So --</p> <p>9 A Yeah. You know what? I can -- yeah.</p> <p>10 There're -- there're some differences there, so I -- I</p> <p>11 can only speculate that George did something with</p> <p>12 them.</p> <p>13 Q At what point did you start calculating</p> <p>14 these risk guidelines in writing?</p> <p>15 A I -- I don't recall.</p> <p>16 Q One moment please. I'm going to mark</p> <p>17 Exhibits 5 and 6, which are going to be Bates stamped</p> <p>18 CFTC3_00024270. And Exhibit 6 is going to be</p> <p>19 CFTC3_00024271.</p> <p>20 I'll tell you when to refresh, here, in a</p> <p>21 moment.</p> <p>22 //</p>
Page 31	Page 33
<p>1 Q Okay. But you had sent him the Excel file</p> <p>2 in Exhibit 2; correct?</p> <p>3 A It looks like something I might have sent</p> <p>4 him. I -- I recall, around this period of time, he</p> <p>5 was asking me for some operating parameters.</p> <p>6 Q Okay. And what you sent him in November of</p> <p>7 2014, in Exhibit 2, includes, as you said, five</p> <p>8 columns; correct?</p> <p>9 A Yes. Let me see this. Yeah.</p> <p>10 Q Okay. And the columns, specifically, are</p> <p>11 the parameter, the metric, who it's reported by, the</p> <p>12 corrective action, and to whom it gets elevated;</p> <p>13 correct?</p> <p>14 A Are you referring to an exhibit now? I'm</p> <p>15 lost.</p> <p>16 Q Exhibit 2.</p> <p>17 A Okay. All right. I still have that open.</p> <p>18 Yeah. That was -- yeah. That's what the</p> <p>19 columns say. Absolutely.</p> <p>20 Q Yes. And you drafted Exhibit 2; right?</p> <p>21 A I -- you know, I think so. But my memory --</p> <p>22 again, I -- I can't swear to that.</p>	<p>1 (Exhibits 5 and 6 were marked for</p> <p>2 identification.)</p> <p>3 Q Okay. You can refresh the page, Mr.</p> <p>4 Walczak, and you should see Exhibits 5 and 6 now.</p> <p>5 A I see them. And I have the drill now. I</p> <p>6 will get them downloaded so I can see them easily.</p> <p>7 Q Thank you. Exhibit 5 appears to be an e-</p> <p>8 mail from Kimberly Rios to you. Who's Kimberly Rios?</p> <p>9 A Just one second, if I could. Six is still</p> <p>10 coming down. Oh, okay. So here is Exhibit 5.</p> <p>11 And you -- I'm sorry, you -- could you</p> <p>12 repeat the question again?</p> <p>13 Q Exhibit 5 appears to be an e-mail from</p> <p>14 Kimberly Rios to you on January 20th of 2015. Do you</p> <p>15 see that?</p> <p>16 A Yes, I do.</p> <p>17 Q Okay. Who's Kimberly Rios?</p> <p>18 A Kimberly Rios is a woman I hired as an</p> <p>19 analyst at some point in the management of the Hedged</p> <p>20 Futures Fund.</p> <p>21 Q Okay. She started working for you in late</p> <p>22 2014; correct?</p>

<p style="text-align: right;">Page 34</p> <p>1 A That sounds about right. Yeah.</p> <p>2 Q So she sends you an e-mail on January 20,</p> <p>3 2015, saying "Ed, attached is the updated procedures</p> <p>4 document we reviewed today. The majority of changes</p> <p>5 are under the first number. Please review for</p> <p>6 improvements." Do you see that?</p> <p>7 A I see that.</p> <p>8 Q Okay. Can you take a look at Exhibit 6,</p> <p>9 please?</p> <p>10 A Okay. I see that.</p> <p>11 Q This is the attachment to that e-mail.</p> <p>12 Number 1 says that -- the header is "Risk Check." Do</p> <p>13 you see that?</p> <p>14 A I do.</p> <p>15 Q Can you walk us through what's described</p> <p>16 here, in No. 1?</p> <p>17 A You know, I don't -- I don't know exactly</p> <p>18 what this was. I -- I remember, when Kimberly</p> <p>19 started, she was -- she was very concerned about</p> <p>20 documenting. I mentioned previously in my testimony I</p> <p>21 did a lot of stuff in my head, and -- and Kimberly was</p> <p>22 concerned.</p>	<p style="text-align: right;">Page 36</p> <p>1 learning curve. She was trying to write down all</p> <p>2 parts of the process that she might be involved in,</p> <p>3 things that she wanted to check about how I was doing</p> <p>4 things. And it was pretty fluid.</p> <p>5 So, you know, I -- honestly, I don't know,</p> <p>6 you know. This was probably different a week prior.</p> <p>7 It was probably different a week later.</p> <p>8 So I -- I would you be doing you a</p> <p>9 disservice to try and tell you much detail about the</p> <p>10 meaning of some of this stuff.</p> <p>11 Q Okay. We can move on.</p> <p>12 From January of 2015 to April of 2015, were</p> <p>13 you monitoring the risk guidelines outlined in Exhibit</p> <p>14 2?</p> <p>15 A Okay. Exhibit 2. All right. Exhibit 2.</p> <p>16 So again, you know, during the entire period</p> <p>17 I managed the Fund, I used some form and version and</p> <p>18 level of risk guidelines to guide me in operating the</p> <p>19 Fund.</p> <p>20 I -- again, I have to apologize. But this</p> <p>21 far in the past, I can't tell you that these were the</p> <p>22 specific ones I used in that specific time frame.</p>
<p style="text-align: right;">Page 35</p> <p>1 I think it was a good initiative on her part</p> <p>2 to try and document activities. But she was also</p> <p>3 documenting some of her activities. And it was a</p> <p>4 pretty fluid situation in terms of trying to get a</p> <p>5 description of both her responsibilities and -- and</p> <p>6 how the Fund was managed.</p> <p>7 So, you know, I mean, I can -- I -- I'd</p> <p>8 really prefer not to speculate on some of these</p> <p>9 things, even though they -- they're certainly familiar</p> <p>10 to me.</p> <p>11 But I don't recall whether Kimberly was</p> <p>12 doing this stuff or whether she was trying to write</p> <p>13 down what I was doing. It's a little fuzzy, back that</p> <p>14 long ago. But if you -- if you want to ask -- I mean,</p> <p>15 obviously if there's something specific, maybe I</p> <p>16 can -- maybe I can recall.</p> <p>17 Q So the face of the document appears to</p> <p>18 describe a process for determining the current</p> <p>19 position size. Is that fair?</p> <p>20 A Again, I mean, as -- as I look over this in</p> <p>21 the last couple of seconds, here -- like I said, what</p> <p>22 I remember is when Kimberly started, she had a big</p>	<p style="text-align: right;">Page 37</p> <p>1 All I can tell you is that, certainly, I</p> <p>2 used some form of operating guidelines, many of which</p> <p>3 are documented with dates that are likely to be</p> <p>4 correct. But this one's not. So I don't know.</p> <p>5 Q Do you recall whether, from January of 2015</p> <p>6 through April of 2015, you were calculating each</p> <p>7 parameter in this risk guideline spreadsheet?</p> <p>8 A No. Again, Mr. Wasserman, I -- I -- as I</p> <p>9 mentioned, I always used operating parameters.</p> <p>10 Sometimes in my head; sometimes, maybe, written down</p> <p>11 in an informal way; maybe, sometimes, written in a</p> <p>12 formal way.</p> <p>13 I don't know if -- specific time frames --</p> <p>14 six, seven years ago -- which ones they were, what</p> <p>15 levels they were. There are documents that are</p> <p>16 present that are more specific -- have more, you know,</p> <p>17 specific dates to them.</p> <p>18 But in terms of what I can respond to you</p> <p>19 from memory, right at this moment, I can't say.</p> <p>20 Q So from the inception, through at least</p> <p>21 April of 2015, you can't say with specificity what</p> <p>22 operating parameters you were using to manage risk?</p>

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<p>1 A Sitting here today, I cannot recall. No.</p> <p>2 Q And you're not aware of any written record</p> <p>3 of your calculation of any of these parameters during</p> <p>4 that period?</p> <p>5 A Again, I -- I don't recall any. I can't say</p> <p>6 with certainty whether they existed or didn't.</p> <p>7 Q Okay. I'm going to mark as Exhibit 7 a</p> <p>8 document Bates stamped CFTC3_00023342.</p> <p>9 If you refresh your browser, you should see</p> <p>10 that in the folder, Mr. Walczak.</p> <p>11 (Exhibit 7 was marked for</p> <p>12 identification.)</p> <p>13 A And it -- and it's just Exhibit 7 now? Just</p> <p>14 that one?</p> <p>15 Q That's right.</p> <p>16 A Okay. I've got it. I will download it.</p> <p>17 All right. I see it.</p> <p>18 Q Okay. Do you recall there being a meeting</p> <p>19 or a phone call with BNP shortly before May 20th of</p> <p>20 2015?</p> <p>21 A I -- I have to, again, let you know that I</p> <p>22 recall very little about phone conversations,</p>	<p>1 Q If you had had a filled-out spreadsheet on</p> <p>2 this date already, would you have asked Ms. Rios to</p> <p>3 fill one out to send to BNP?</p> <p>4 A I don't know.</p> <p>5 Q If you had had a spreadsheet filled out</p> <p>6 already, you wouldn't need to ask Kimberly to send a</p> <p>7 sample to BNP; right?</p> <p>8 A I -- I don't know. There's -- it could be I</p> <p>9 wanted her to have practice in doing something that</p> <p>10 was already done. It could be that it was a fresh one</p> <p>11 to be done that day. It could be that we'd never done</p> <p>12 one before and wanted to produce a sample of what we</p> <p>13 were contemplating.</p> <p>14 So I can -- I can dream up a number of</p> <p>15 different scenarios. But again, this is day-to-day</p> <p>16 business six years ago in an office. I just don't</p> <p>17 know what was going on.</p> <p>18 Q Okay. I mean, but to be clear, you're not</p> <p>19 dreaming up particular scenarios.</p> <p>20 You're speaking from your experience as the</p> <p>21 manager of the Fund since its inception; right?</p> <p>22 A What I -- my remarks just were meant to --</p>
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<p>1 meetings, and e-mails, if anything, back in 2015. So</p> <p>2 no, I don't recall specifics about any meetings.</p> <p>3 Q The e-mail appears to reflect an e-mail from</p> <p>4 you to Kimberly on May 20th of 2015 that says "Could</p> <p>5 you take a run at filling out the risk spreadsheet -</p> <p>6 looks like BNP wants to see one." Do you see that?</p> <p>7 A I see that.</p> <p>8 Q Do you know whether you had ever filled out</p> <p>9 a risk spreadsheet prior to this date?</p> <p>10 A No, I do not.</p> <p>11 Again, I -- I'm very sorry to be repetitive.</p> <p>12 But I -- I don't recall six years ago.</p> <p>13 Q You can just answer the question, Mr.</p> <p>14 Walczak. You don't need to apologize.</p> <p>15 A Well, all right. I'm -- I'm happy to do</p> <p>16 that.</p> <p>17 Q All right. Why would you have asked</p> <p>18 Kimberly to fill one out at this time?</p> <p>19 A I -- I'm sorry. I don't have any context</p> <p>20 for what was going on at that very time. I'm not sure</p> <p>21 who BNP is. I just don't know. I mean, that's all I</p> <p>22 can tell you.</p>	<p>1 to -- based on my experience in managing -- in</p> <p>2 interacting with Kimberly and managing a fund. Yes, I</p> <p>3 can imagine a number of different scenarios. But</p> <p>4 they -- it's only imagining a number of different</p> <p>5 scenarios that might have led to this exchange.</p> <p>6 Q And one of the possible --</p> <p>7 A Excuse me, Mr. Wasserman, while I complete</p> <p>8 my answer.</p> <p>9 I can't -- I can't recall any specific</p> <p>10 detail. I have you some hypotheticals in response to</p> <p>11 your question about what might have been.</p> <p>12 Q I'm going to mark, as Exhibit 8, a document</p> <p>13 Bates stamped CFTC4_00000325.</p> <p>14 Could you please refresh your browser and</p> <p>15 review that exhibit, Mr. Walczak?</p> <p>16 (Exhibit 8 was marked for</p> <p>17 identification.)</p> <p>18 A And that is Exhibit 8? Am I up to date,</p> <p>19 here? Is that correct?</p> <p>20 Q Yes.</p> <p>21 A All right. I have it.</p> <p>22 Q Okay. This appears to be another e-mail</p>

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<p>1 from Mr. Amrhein to you; correct?</p> <p>2 A Yes, that's correct. That's what it appears</p> <p>3 to be.</p> <p>4 Q And it's dated May 27, 2015, at 5:21 p.m.</p> <p>5 A Yes.</p> <p>6 Q Okay. Do you recall there being a meeting</p> <p>7 scheduled with Mr. Kumar, from UBS, shortly after this</p> <p>8 e-mail?</p> <p>9 A No, I don't.</p> <p>10 Q Do you remember Mr. Kumar coming to</p> <p>11 Wisconsin in June of 2015?</p> <p>12 A I remember that Mr. Kumar visited Wisconsin.</p> <p>13 I don't recall when.</p> <p>14 Q Okay. Do you recall, in anticipation of Mr.</p> <p>15 Kumar's visit to Wisconsin, creating or filling in the</p> <p>16 risk parameter spreadsheets in the form of Exhibit 2?</p> <p>17 A No, I don't.</p> <p>18 Q Do you recall asking Ms. Rios or an intern,</p> <p>19 in June of 2015, to fill in risk parameter</p> <p>20 spreadsheets in anticipation of Mr. Kumar's visit?</p> <p>21 A Again, I -- I don't want to be</p> <p>22 noncooperative, but if you're asking my specific</p>	<p>1 advance of Mr. Kumar's visit in June of 2015?</p> <p>2 A Well, again, I honestly don't remember the</p> <p>3 time frame of Mr. Kumar's visit.</p> <p>4 I recall that we -- we did get the employee</p> <p>5 interns. One of the intern's job, at some point, when</p> <p>6 we started formally recording risk parameters so</p> <p>7 that -- that was an important part of the risk -- the</p> <p>8 intern's job. So that -- that much, I remember.</p> <p>9 Q Okay. When did you formally start recording</p> <p>10 risk parameters?</p> <p>11 A That, I don't remember. Like I said --</p> <p>12 Q Was it --</p> <p>13 A The -- the context is that I -- I know we</p> <p>14 had interns. I know one of the intern's job was to</p> <p>15 fill in a risk or operating parameter risk metric</p> <p>16 spreadsheet.</p> <p>17 Q Okay. Was it at some point after June of</p> <p>18 2015 when the intern started formally recording the</p> <p>19 risk parameters?</p> <p>20 A Yeah. I don't -- I don't know the dates.</p> <p>21 Q Okay. Well, if the risk parameters had been</p> <p>22 formally recorded prior to June 20th of 2015, would</p>
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<p>1 recollection, I -- I honestly don't have any</p> <p>2 recollection of the details of daily activities from</p> <p>3 this time frame.</p> <p>4 MR. KOPECKY: And that's all he's</p> <p>5 asked. And he's just asking for your personal</p> <p>6 knowledge and your recollection.</p> <p>7 So you don't need to apologize or</p> <p>8 comment on it. Just answer the question.</p> <p>9 THE WITNESS: Okay. All right.</p> <p>10 Certainly.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q I'm marking, as Exhibit 9, an e-mail Bates</p> <p>13 stamped CFTC3_00030811.</p> <p>14 (Exhibit 9 was marked for</p> <p>15 identification.)</p> <p>16 Q Sorry, Mr. Walczak, it's not up there quite</p> <p>17 yet. Okay. It should be up there now. If you could,</p> <p>18 please review it.</p> <p>19 A All right. I got it.</p> <p>20 Q Okay. Mr. Walczak, does Exhibit 9 refresh</p> <p>21 your recollection as to whether you asked an intern to</p> <p>22 retroactively fill in risk guideline spreadsheets in</p>	<p>1 you have had to ask him to do this?</p> <p>2 A I mean, possibly as a training exercise. I</p> <p>3 think -- I do know that we did have interns do lots of</p> <p>4 training exercises when they started.</p> <p>5 Q Okay. But you don't say anything regarding</p> <p>6 training in this e-mail. In fact, the e-mail</p> <p>7 specifically articulates the purpose for which you're</p> <p>8 asking him to do it; right?</p> <p>9 A Yeah. I mean, I -- I can't tell you the</p> <p>10 exact purpose, there. Maybe to demonstrate that we</p> <p>11 had an intern who knew what he was doing. Maybe this</p> <p>12 was training.</p> <p>13 So again, I -- I'm not sure what I meant,</p> <p>14 other than I know that interns filled in risk</p> <p>15 spreadsheets.</p> <p>16 Q Can you think of any other reason, besides</p> <p>17 training, why you would have asked the intern to</p> <p>18 retroactively complete these spreadsheets?</p> <p>19 A Could be that we were testing risk</p> <p>20 parameters and -- and collecting data and wanting to</p> <p>21 understand what the -- what different parameters</p> <p>22 looked like relative to the Fund. You know, that's</p>

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<p>1 just --</p> <p>2 Q Did you --</p> <p>3 A -- a speculative guess at what we might be</p> <p>4 doing.</p> <p>5 Q Why would you need to ask him to do that if</p> <p>6 you had been using these parameters before?</p> <p>7 A Well, again, I'm not sure when we started</p> <p>8 writing them down. I'm not -- not sure what levels we</p> <p>9 were using. I'm not sure whether -- adding new ones,</p> <p>10 deleting old ones.</p> <p>11 This was a reasonably -- as in the entire</p> <p>12 operation of the Fund, there -- there was some</p> <p>13 fluidity. And -- and you do test and modify</p> <p>14 techniques to try to get better at what you're doing,</p> <p>15 so.</p> <p>16 Q All right. So in June of 2015 the</p> <p>17 parameters were still a work in progress?</p> <p>18 A That -- you know, the parameters -- I'm not</p> <p>19 sure exactly what you mean by "work in progress." But</p> <p>20 they're always subject to improvement and modification</p> <p>21 based on, you know, the Fund's performance, the market</p> <p>22 condition, and so on.</p>	<p>1 A That's certainly possible.</p> <p>2 Q Isn't that more likely than it being a</p> <p>3 training exercise for the intern?</p> <p>4 A Again, I don't want to speculate on -- on</p> <p>5 likelihood in that case. I honestly don't remember.</p> <p>6 I can't, you know -- I -- I can't remember</p> <p>7 that there was an urgency to impress Mr. Kumar or to</p> <p>8 show him 10 instead of 20, or -- again, I don't</p> <p>9 remember the details.</p> <p>10 Nothing comes to mind as -- as to why that</p> <p>11 would be, other than, you know, wanting to -- to show</p> <p>12 him as much as data as we could.</p> <p>13 Q So you did want to show Mr. Kumar completed</p> <p>14 risk spreadsheets?</p> <p>15 A Again, I don't remember. But it wouldn't</p> <p>16 surprise me if that were the case.</p> <p>17 Q Okay. And because you wanted to show --</p> <p>18 strike that.</p> <p>19 What do you recall of the meeting when Mr.</p> <p>20 Kumar came to Wisconsin?</p> <p>21 A I don't recall any particular detail. I</p> <p>22 just remember he and Kimberly and I sat around the</p>
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<p>1 Q Okay. What were the risk parameters that</p> <p>2 you were using in June of 2015?</p> <p>3 A I -- again, I don't -- I don't recall in --</p> <p>4 on that specific date because they evolved and changed</p> <p>5 over time. I don't recall, at that time, which ones</p> <p>6 we were using.</p> <p>7 Q Okay. If you recall, why do you say "as</p> <p>8 many as you can get done by Thursday night"?</p> <p>9 A I don't know.</p> <p>10 Q Okay. Would there be a particular urgency</p> <p>11 to a training exercise?</p> <p>12 A I don't know.</p> <p>13 Q Well, in the several years in which you had</p> <p>14 interns, did you ever create hard deadlines for a</p> <p>15 training exercise?</p> <p>16 A Oh, absolutely. These are interns, and</p> <p>17 these are college students. They need structure, they</p> <p>18 need to understand deadlines, responsibilities --</p> <p>19 Q Mr. Walczak, isn't it more likely that Mr.</p> <p>20 Kumar was coming in that Friday, and that you wanted</p> <p>21 to prepare as many risk guidelines as possible in</p> <p>22 advance of that visit?</p>	<p>1 table and had a discussion. But I don't remember</p> <p>2 specifics.</p> <p>3 Q All right. Do you recall showing him risk</p> <p>4 guidelines?</p> <p>5 A I don't remember.</p> <p>6 Q Do you recall any details about that meeting</p> <p>7 at all?</p> <p>8 A No.</p> <p>9 Q Not even who else was there or if there was</p> <p>10 anyone else there?</p> <p>11 A I don't. As I said, I -- I remember very</p> <p>12 specifically that Kimberly and I and Mr. Kumar were</p> <p>13 there. I don't remember if we had our intern.</p> <p>14 In fact, I was actually a little surprised</p> <p>15 it was Augie. I thought it was Zach at this time,</p> <p>16 from my recollection. So it's clear that I don't</p> <p>17 remember very clearly.</p> <p>18 Q We've been going for about an hour, Mr.</p> <p>19 Walczak. Why don't we go off the record and take 10</p> <p>20 minutes.</p> <p>21 A Sure. Thank you.</p> <p>22 VIDEOGRAPHER: The time is 9:28 a.m.</p>



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<p>1 This ends Unit No. 1. We're off the record.</p> <p>2 (Off the record.)</p> <p>3 VIDEOGRAPHER: The time is 9:39 a.m.</p> <p>4 This begins Unit No. 2. We're on the record.</p> <p>5 BY MR. WASSERMAN:</p> <p>6 Q Okay. Mr. Walczak, I have marked, in</p> <p>7 advance, a few more exhibits: 10, 11, and 12.</p> <p>8 Do you see those loaded in your "marked</p> <p>9 exhibit folder"?</p> <p>10 (Exhibits 10 through 12 were marked for</p> <p>11 identification.)</p> <p>12 A Let me refresh. I have them. Let me -- I'm</p> <p>13 assuming I should probably download them.</p> <p>14 Q The Excel files, probably. Although we're</p> <p>15 only going to be looking at them one at a time.</p> <p>16 So if you could, open up Exhibit 10.</p> <p>17 A All right. Yes. I have Exhibit 10.</p> <p>18 Q Okay. Could you take a moment to review</p> <p>19 that.</p> <p>20 A Sure. Got it.</p> <p>21 Q Okay. And for this, Mr. Walczak, I'm</p> <p>22 actually going to share my screen so that we can do</p>	<p>1 that's right, it was to Augie. I kind of expected it</p> <p>2 to be Zach, and it was Augie. Okay.</p> <p>3 Q But despite the metadata showing that the</p> <p>4 file was created on June 21, 2015, if we go back to</p> <p>5 the file itself, it's dated, on the top in cell C1,</p> <p>6 May 8th of 2015, over a month earlier. Right?</p> <p>7 A Yeah. Those are the two dates. Sure.</p> <p>8 Q Okay. Does this refresh your recollection</p> <p>9 at all as to whether Augie retroactively filled in</p> <p>10 risk spreadsheets in June of 2015?</p> <p>11 A No. I still don't recall any -- any details</p> <p>12 of what went on during that time frame.</p> <p>13 Q Okay. Taking a look at some of the</p> <p>14 specifics of the spreadsheet itself, one of the</p> <p>15 parameters is listed as "Risk: Open Options premium</p> <p>16 value - Calls." Do you see that?</p> <p>17 A Yes.</p> <p>18 Q What does that mean?</p> <p>19 A So again, that's the net market value of</p> <p>20 existing call positions in the Fund.</p> <p>21 Q Okay. Do you recall, at this time, how that</p> <p>22 was calculated?</p>
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<p>1 what we did last time.</p> <p>2 Do you see the document in my screenshare?</p> <p>3 A I do.</p> <p>4 Q Okay. Do you recognize this document or, at</p> <p>5 least, this form of document?</p> <p>6 A Yeah. That's a version of our risk</p> <p>7 guidelines.</p> <p>8 Q Okay. If I go over to the File tab and</p> <p>9 Info, do you see the Related Dates and the Author?</p> <p>10 A I do.</p> <p>11 Q Okay. You see that it was created on June</p> <p>12 21st of 2015 by August?</p> <p>13 A Yes.</p> <p>14 Q Okay. And August being a name, not a date,</p> <p>15 just to clarify for the record.</p> <p>16 Who is August?</p> <p>17 A "Augie" is what we called him. Augie Ewald</p> <p>18 was one of the interns that we used.</p> <p>19 Q And he was the intern that you e-mailed</p> <p>20 about filling in the spreadsheets in the exhibit that</p> <p>21 we looked at before the break; right?</p> <p>22 A Yeah. I think that was -- that e-mail --</p>	<p>1 A Well, it was -- do you mean the source?</p> <p>2 Where the data source was from?</p> <p>3 Q No. Just how it was calculated.</p> <p>4 A I mean, I don't understand the "how" part.</p> <p>5 I -- I just said it's the open -- it's the</p> <p>6 net market value of open call positions in the Fund.</p> <p>7 Q And how do you calculate that metric?</p> <p>8 A So you are asking me where the data comes</p> <p>9 from?</p> <p>10 Q If you want to start with that, that's fine.</p> <p>11 A Or -- or do you not understand the meaning</p> <p>12 of -- and I don't mean this in a negative way -- do</p> <p>13 you not understand the meaning of the net open market</p> <p>14 value of calls?</p> <p>15 Q Let's start with what data you used to</p> <p>16 calculate it.</p> <p>17 A Okay. The data, as I mentioned previously,</p> <p>18 would come either from a brokerage statement or my</p> <p>19 OptionVue system.</p> <p>20 I suspect -- yeah. I mean, my best guess</p> <p>21 would be Augie is looking at brokerage statements.</p> <p>22 Q Okay. And you mean the FCM statements?</p>

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<p>1 A Yes.</p> <p>2 Q And what numbers from that brokerage</p> <p>3 statement are used to calculate that metric?</p> <p>4 A The net market value of the open call</p> <p>5 positions in the fund.</p> <p>6 Q Okay. So the brokerage statement has, in</p> <p>7 writing, the net market value of the open call</p> <p>8 positions by themselves?</p> <p>9 A Each position has an individual line on the</p> <p>10 brokerage statement with its market value at the end</p> <p>11 of the day. Yes.</p> <p>12 Q Okay. Did the brokerage statement add up</p> <p>13 the market value of all those options?</p> <p>14 A It does. Yes.</p> <p>15 Q When it adds up the market value of all</p> <p>16 those options, does it differentiate between calls and</p> <p>17 puts?</p> <p>18 A On the brokerage statement in the summary</p> <p>19 line? No.</p> <p>20 Q Okay. So to get the aggregate net market</p> <p>21 value of the calls, what would you need to do?</p> <p>22 A You would add up the net market value of all</p>	<p>1 value of the calls is negative.</p> <p>2 Q What does that mean?</p> <p>3 A I'm not sure how -- what else to say about</p> <p>4 it. The open market value of the calls is less than</p> <p>5 zero.</p> <p>6 Q Okay. Does it mean that the total value of</p> <p>7 your short positions is greater than the total value</p> <p>8 of your long positions?</p> <p>9 A Well, I -- I guess you could say that. I --</p> <p>10 I'm not accustomed to thinking about it that way. But</p> <p>11 that sort of sounds right.</p> <p>12 Q Okay. Well, how would you think about it?</p> <p>13 A I'm sorry. I shifted my chair. I didn't</p> <p>14 hear the end of your question.</p> <p>15 Q Is there anything wrong with the way I</p> <p>16 characterized it? And if you would characterize it</p> <p>17 differently, then how would you characterize it</p> <p>18 differently?</p> <p>19 A I -- I would tell you that the open options</p> <p>20 premium is the sum of the value of the -- the open</p> <p>21 call positions in the fund. It can be positive; can</p> <p>22 be negative. This one happens to be negative.</p>
Page 55	Page 57
<p>1 the open call positions in the fund.</p> <p>2 Q Okay. So that's how one would calculate the</p> <p>3 market value of the open call positions for this</p> <p>4 metric?</p> <p>5 A Well, no. You're not calculating the market</p> <p>6 value. You're adding up the -- the -- again, sorry.</p> <p>7 But, all right, I don't apologize any more.</p> <p>8 But it's the sum of the net open -- the net</p> <p>9 market value of the open call positions in the fund.</p> <p>10 Q Okay. In cell C10 it says "Less than 8% NAV</p> <p>11 net calls;" right?</p> <p>12 A Yes.</p> <p>13 Q What does that mean?</p> <p>14 A That means that our guideline is to have</p> <p>15 that open options premium value be less than 8 percent</p> <p>16 of the net asset value of the Fund.</p> <p>17 Q Okay. In this particular spreadsheet, that</p> <p>18 percentage calculation is -0.71. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q What does it mean for the percentage to be</p> <p>21 negative?</p> <p>22 A That means that the value -- the open market</p>	<p>1 Q And does the fact that it's negative mean</p> <p>2 that the market value of your short positions is</p> <p>3 greater than the market value of your long positions?</p> <p>4 A Yeah. Yeah. I think that's right. Yeah.</p> <p>5 Now that I think about it a little bit harder, I think</p> <p>6 that's right. Yeah.</p> <p>7 Q Okay. So in what circumstances would this</p> <p>8 metric be breached?</p> <p>9 A If that number was less than a -8 percent.</p> <p>10 Q Okay. So really, you mean for it to be an</p> <p>11 absolute value, not for it to be a positive or a</p> <p>12 negative?</p> <p>13 A Well, no. If -- if it's less -- I mean, it</p> <p>14 kind of says it there. If it's less than 8 percent of</p> <p>15 the NAV, that's a breach.</p> <p>16 Q Okay. Maybe we're just talking semantics,</p> <p>17 here.</p> <p>18 But the metric is that the open options</p> <p>19 premium value should be less than 8 percent of the</p> <p>20 net; right?</p> <p>21 A Yeah. The absolute value should be less</p> <p>22 than 8 percent. But in a -- in terms of a negative</p>



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<p>1 number we really mean, for example, -9 percent is less</p> <p>2 than -8 percent.</p> <p>3 Q Okay. Was there any point at which this was</p> <p>4 fixed so that the "Status" column would reflect an</p> <p>5 absolute value rather than a negative?</p> <p>6 A I don't remember.</p> <p>7 Q Okay. We're actually going to skip Exhibit</p> <p>8 11.</p> <p>9 If you could open up Exhibit 12, Mr.</p> <p>10 Walczak.</p> <p>11 A Okay. I got it.</p> <p>12 Q Could you take a moment to review it?</p> <p>13 A Yes.</p> <p>14 Q So this appears to be an email from Kimberly</p> <p>15 Rios to you on November 23rd of 2015; correct?</p> <p>16 A Yes.</p> <p>17 Q Okay. Who's ADM?</p> <p>18 A Oh, yeah. ADM was one of our FCMs, I think.</p> <p>19 I -- yeah. Maybe --</p> <p>20 Q The e-mail --</p> <p>21 A Sorry.</p> <p>22 Q No. Go ahead.</p>	<p>1 question lacks foundation for the spreadsheet.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q To the best of your recollection, Mr.</p> <p>4 Walczak, at this time, is Augie the one who is filling</p> <p>5 out the risk guidelines matrix?</p> <p>6 A Yeah. I mean, again, what I remember is the</p> <p>7 intern did it. I'm pretty sure Augie was the intern</p> <p>8 at this time.</p> <p>9 We did have multiple interns, so yeah. To</p> <p>10 the best of my recollection, I think it's fair to say.</p> <p>11 Sure.</p> <p>12 MR. KOPECKY: I mean, Sam, that misses</p> <p>13 my objection. You don't know if it's the risk metrics</p> <p>14 spreadsheet. You haven't tied the columns together.</p> <p>15 So my objection's on the record.</p> <p>16 But Ed, do the best you can.</p> <p>17 THE WITNESS: Okay.</p> <p>18 BY MR. WASSERMAN:</p> <p>19 Q Ms. Rios says that "the spreadsheets are not</p> <p>20 completed each day." Actually, strike that.</p> <p>21 Is there any other spreadsheet that Ms. Rios</p> <p>22 would be referring to, other than the risk matrix</p>
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<p>1 A No. I was going to say I don't -- I don't</p> <p>2 remember. My initial sense was maybe they were a</p> <p>3 distributor of some kind but -- because I think they</p> <p>4 may have an RM like that. But no.</p> <p>5 ADM was our, at that time, I think, one of</p> <p>6 our FCMs.</p> <p>7 Q Okay. The e-mail indicates that ADM is</p> <p>8 asking for the margin percentage number from the</p> <p>9 spreadsheet. Do you see that?</p> <p>10 A Yes.</p> <p>11 Q Kimberly says "This is something that Augie</p> <p>12 could send them," presumably because Augie's the one,</p> <p>13 at this time, that's responsible for filling out the</p> <p>14 spreadsheet; is that right?</p> <p>15 A Yeah. It sounds like Augie's the intern</p> <p>16 then. Yes.</p> <p>17 Q And, specifically, that, at this time, in</p> <p>18 November 2015, he's the one responsible for filling</p> <p>19 out the spreadsheet?</p> <p>20 A I think so. Yes.</p> <p>21 MR. KOPECKY: All right. Just an</p> <p>22 objection on the foundation for the spreadsheet. Your</p>	<p>1 guidelines spreadsheet?</p> <p>2 A I -- I don't know. I do recall we had all</p> <p>3 kinds of spreadsheets we used in the management of the</p> <p>4 Fund and in our analytics. So I can't say with</p> <p>5 certainty, you know, what else there was. But there</p> <p>6 were certainly more than one.</p> <p>7 Q Okay. Was there any other spreadsheet in</p> <p>8 which you made a margin percentage calculation?</p> <p>9 A Well, we didn't really do a margin</p> <p>10 calculation or spreadsheet -- I -- again, I -- I don't</p> <p>11 know. We --</p> <p>12 Q Well, Mr. Walczak --</p> <p>13 A -- this in spreadsheets.</p> <p>14 Q Do you have any reason to believe that Ms.</p> <p>15 Rios is referring to anything other than the risk</p> <p>16 guidelines matrix in this e-mail?</p> <p>17 A Again, I'd have -- it's -- it's an</p> <p>18 analytic -- a heavy analytic business. We had</p> <p>19 spreadsheets coming out of ears. Pardon the</p> <p>20 vernacular. But -- so I don't know.</p> <p>21 Q Mr. Walczak, respectfully, I just ask for an</p> <p>22 answer to the question. Do you have any reason to</p>

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<p>1 believe --</p> <p>2 MR. KOPECKY: He gave you an answer,</p> <p>3 Sam. You just don't like the answer.</p> <p>4 MR. WASSERMAN: No. He --</p> <p>5 MR. KOPECKY: He said "I don't know" if</p> <p>6 that's the spreadsheet. He doesn't know.</p> <p>7 MR. WASSERMAN: And that's not an</p> <p>8 answer to the question.</p> <p>9 MR. KOPECKY: Sure it is. You just</p> <p>10 disagree with it being an answer. I mean, I can't --</p> <p>11 MR. WASSERMAN: You --</p> <p>12 MR. KOPECKY: Go ahead.</p> <p>13 MR. WASSERMAN: You can make an</p> <p>14 objection if you want, and --</p> <p>15 MR. KOPECKY: I just did.</p> <p>16 MR. WASSERMAN: -- that's it. I'm</p> <p>17 entitled to ask the question again to get an answer.</p> <p>18 MR. KOPECKY: You can ask it again. Go</p> <p>19 ahead. Ask it again.</p> <p>20 BY MR. WASSERMAN:</p> <p>21 Q Mr. Walczak, do you have any reason to</p> <p>22 believe that Ms. Rios is referring to anything else in</p>	<p>1 other than the risk matrix guidelines, that referred</p> <p>2 to a margin percentage?</p> <p>3 A I don't recall the detail behind all the</p> <p>4 spreadsheets that he created or the work that we asked</p> <p>5 him to do. Because it was back in 2015, and I simply</p> <p>6 don't remember that detail.</p> <p>7 Q So you don't have any reason to believe that</p> <p>8 Ms. Rios is referring to anything other than the risk</p> <p>9 guidelines matrix; right?</p> <p>10 MR. KOPECKY: Asked and answered.</p> <p>11 A I'll continue, Mr. Wasserman -- I can do</p> <p>12 nothing but to continue to answer your question. I --</p> <p>13 I'm puzzled as -- as to what's different about that</p> <p>14 question that I've answered before. But I'll answer</p> <p>15 it again.</p> <p>16 And that is: We had a number of</p> <p>17 spreadsheets, related to fund operation, that Kimberly</p> <p>18 worked on, that interns worked on. And this is almost</p> <p>19 six years ago.</p> <p>20 I don't remember the details behind what</p> <p>21 populated those spreadsheets, what interns worked on,</p> <p>22 what Kimberly worked on, what numbers were used,</p>
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<p>1 this e-mail other than to the risk guidelines matrix?</p> <p>2 MR. KOPECKY: Objection; asked and</p> <p>3 answered.</p> <p>4 Go ahead, Ed.</p> <p>5 A In -- in my previous response, I mentioned</p> <p>6 that we used a wide variety and -- and large numbers</p> <p>7 of spreadsheets. So my reason to believe it might be</p> <p>8 different is because of the number of spreadsheets and</p> <p>9 analytics that we used. So certainly, I have that</p> <p>10 reason to believe it might refer to a different</p> <p>11 spreadsheet.</p> <p>12 Q Okay. What other spreadsheet might it refer</p> <p>13 to?</p> <p>14 A As I said, we used any number of</p> <p>15 spreadsheets to calculate all sorts of numbers related</p> <p>16 to fund performance.</p> <p>17 Q Was Augie Ewald responsible for creating any</p> <p>18 other spreadsheet that included a margin percentage</p> <p>19 besides the risk guidelines matrix?</p> <p>20 A I don't remember all the spreadsheets he</p> <p>21 worked on. But he worked on several.</p> <p>22 Q Are you aware of any one that he worked on,</p>	<p>1 what -- what the spreadsheets were used for.</p> <p>2 I just don't recall that level of detail. I</p> <p>3 can't give you a truthful answer that says</p> <p>4 specifically what it was.</p> <p>5 Q So sitting here today, you are not aware of</p> <p>6 any other spreadsheet that Mr. Ewald would have been</p> <p>7 working on other than the risk guidelines matrix.</p> <p>8 MR. KOPECKY: Asked and answered.</p> <p>9 A I am -- I am not aware of a specific</p> <p>10 spreadsheet. I am certain that he worked on more</p> <p>11 spreadsheets than the risk management -- matrix</p> <p>12 spreadsheet.</p> <p>13 Q Ms. Rios, in this e-mail, says "the</p> <p>14 spreadsheets are not completed each day."</p> <p>15 Do you know whether, at this time, the risk</p> <p>16 guidelines matrix was completed each day?</p> <p>17 A No. I don't recall. As I mentioned,</p> <p>18 starting with the Harbor Fund -- this is a recount on</p> <p>19 my previous testimony.</p> <p>20 Starting with the Harbor Fund and moving</p> <p>21 into the mutual fund, our methodology evolved in both</p> <p>22 the -- the type of metric we used, the level of metric</p>

<p style="text-align: right;">Page 66</p> <p>1 we used.</p> <p>2 And whether or not it was formally recorded,</p> <p>3 whether or not it was formally recorded every day,</p> <p>4 whether it was done in my head, whether it was done on</p> <p>5 a yellow sheet of paper, this is -- this process</p> <p>6 evolved.</p> <p>7 There was always a set of parameters that</p> <p>8 were used, but they did evolve. And I don't recall</p> <p>9 specific time frames or specific events at which they</p> <p>10 changed or became formalized. I just don't recall</p> <p>11 those dates.</p> <p>12 Q You don't know, sitting here today, whether,</p> <p>13 in November of 2015, the risk matrix spreadsheet was</p> <p>14 filled in every day?</p> <p>15 A I don't know that, no.</p> <p>16 Q If it wasn't filled in every day, how did</p> <p>17 you monitor the risk factors?</p> <p>18 A I did the -- the calculation in my head.</p> <p>19 Q What did you calculate in your head?</p> <p>20 A Whatever parameters that we were using at</p> <p>21 the time.</p> <p>22 Q Do you recall what parameters you were using</p>	<p style="text-align: right;">Page 68</p> <p>1 Okay. Mr. Walczak, do you recognize this</p> <p>2 document?</p> <p>3 A Can't say that I recognize this specific</p> <p>4 one. I've seen documents like this before.</p> <p>5 Q Okay. What does it appear to be?</p> <p>6 A It appears to be a PowerPoint presentation</p> <p>7 describing the Fund.</p> <p>8 Q You played a role in drafting this type of</p> <p>9 presentation; correct?</p> <p>10 A I believe I provided some content to this.</p> <p>11 Yes.</p> <p>12 Q Okay. Including content about the strategy</p> <p>13 and about how risk was managed; correct?</p> <p>14 A I did write some content in here. I don't</p> <p>15 know which one you're referring to, specifically. But</p> <p>16 I -- like I said, I provided content. I put my -- my</p> <p>17 background on here and so forth. Yeah.</p> <p>18 Q All right. If you could scroll down to</p> <p>19 slide 7, where there's a bullet labeled "Risk</p> <p>20 Management" in bold.</p> <p>21 A Yes. I see that.</p> <p>22 Q Do you see where it says "Every position is</p>
<p style="text-align: right;">Page 67</p> <p>1 in November of 2015?</p> <p>2 A No. I don't recall, back that far, exactly</p> <p>3 what we were using.</p> <p>4 Q Okay. I'm going to mark as Exhibits 13 and</p> <p>5 14 a couple PDFs that appear to be PowerPoint</p> <p>6 presentations.</p> <p>7 The Bates stamps are not in the same format</p> <p>8 as the others. But they were produced to us by</p> <p>9 Catalyst. One is labeled "Item 2.16," and the other</p> <p>10 is labeled "Item 2.17" -- Exhibits 13 and 14,</p> <p>11 respectively.</p> <p>12 (Exhibits 13 and 14 were marked for</p> <p>13 identification.)</p> <p>14 A I have 13.</p> <p>15 Q Okay. You should be able to see 14 now as</p> <p>16 well. But we're going to look at 13 first, Mr.</p> <p>17 Walczak.</p> <p>18 A All right. Let me get the other one down,</p> <p>19 just to make sure. Okay. I've got it.</p> <p>20 Q All right. Give me one moment. I'm</p> <p>21 actually having trouble getting it to load on my</p> <p>22 screen. Oh, there it is.</p>	<p style="text-align: right;">Page 69</p> <p>1 initiated on a hedged basis with stop loss trigger</p> <p>2 points to limit drawdowns"?</p> <p>3 A Yes, I see that.</p> <p>4 Q Is that your language?</p> <p>5 A I don't recall.</p> <p>6 Q Would anyone else have had information about</p> <p>7 how the Fund's risk was managed in 2013 besides you?</p> <p>8 A Catalyst would have.</p> <p>9 Q How would they have learned about it?</p> <p>10 A They would have reviewed the documents I</p> <p>11 provided them from my predecessor fund.</p> <p>12 Q Okay. So the information about risk</p> <p>13 management of the Fund could have only come from you;</p> <p>14 right?</p> <p>15 A I -- I -- honestly, I can't speculate on</p> <p>16 where Catalyst drew their information from. I</p> <p>17 certainly provided some.</p> <p>18 Q Who was responsible for managing the risk of</p> <p>19 the fund?</p> <p>20 A I was.</p> <p>21 Q Okay. So was there anyone else who the</p> <p>22 information about managing the risk of the fund could</p>

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<p>1 have come from, besides from you?</p> <p>2 A Of course.</p> <p>3 Q Was there any other original source of</p> <p>4 information about risk management in the Catalyst</p> <p>5 Hedged Futures Strategy Fund aside from yourself?</p> <p>6 A What do you mean by "original"?</p> <p>7 Q We can move on.</p> <p>8 Down on slide 10, the third bullet says</p> <p>9 "Reduced volatility achieved through hedging all</p> <p>10 positions at the outset with ongoing adjustment based</p> <p>11 on well-defined and proven risk parameters." Do you</p> <p>12 see that?</p> <p>13 A Yes.</p> <p>14 Q Is that your language?</p> <p>15 A Again, I don't know. I certainly provided</p> <p>16 input to these documents. I provided language at some</p> <p>17 point.</p> <p>18 But it was fairly common -- it was my</p> <p>19 expectation that Catalyst would amend the language to</p> <p>20 ensure that there was compliance. And they did that</p> <p>21 on -- on several occasions.</p> <p>22 So I can't vouch for the fact that these</p>	<p>1 Q Yes, please.</p> <p>2 A -- a PowerPoint.</p> <p>3 Q Fifteen is an e-mail. Specifically, there</p> <p>4 are two parts to the chain.</p> <p>5 The earlier part of the chain appears to be</p> <p>6 from Michael Schoonover to yourself, on Sunday, May</p> <p>7 11, 2014; is that right?</p> <p>8 A I'm seeing one that appears to be from me to</p> <p>9 Michael Schoonover. Oh, I'm sorry. I see what you're</p> <p>10 saying now. The earlier part. Okay. Sunday, yeah.</p> <p>11 Q Who is Michael Schoonover?</p> <p>12 A He was a -- a Catalyst employee.</p> <p>13 Q What was his role in or around May of 2014?</p> <p>14 A Don't know.</p> <p>15 Q Okay. Do you see where he says, in that</p> <p>16 earlier e-mail from May 11, 2014, "I'm working on a</p> <p>17 newsletter for this Tuesday and was wondering if you</p> <p>18 could send me a copy of the presentation you gave in</p> <p>19 Vegas?"</p> <p>20 A Yeah. I see that.</p> <p>21 Q Okay. Do you recall giving a presentation</p> <p>22 in Vegas in early 2014?</p>
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<p>1 were my exact words or even that I provided the words.</p> <p>2 But I did provide content like this.</p> <p>3 Q Okay. I'm going to mark, as Exhibits 15 and</p> <p>4 16, an e-mail and an attachment. The e-mail is Bates</p> <p>5 stamped SEC_04_0371171. And the attachment is a</p> <p>6 PowerPoint presentation Bates stamped SEC_04_0371172</p> <p>7 (Exhibits 15 and 16 were marked for</p> <p>8 identification.)</p> <p>9 Q I see that 15 has made it in there. I think</p> <p>10 16 is still working.</p> <p>11 A I got 15. Excuse me.</p> <p>12 Q Let's try this one more time. There we go.</p> <p>13 Okay.</p> <p>14 Mr. Walczak, could you please first pull up</p> <p>15 Exhibit 15?</p> <p>16 A I have 15 up. Let me quickly download 16 so</p> <p>17 I'll be prepared. Sixteen doesn't want to download</p> <p>18 either.</p> <p>19 Q We can give it another sec. But if it</p> <p>20 doesn't, I can share my screen with you, Mr. Walczak.</p> <p>21 A Okay. I'm looking in the wrong place. Are</p> <p>22 we going to look at 15 first? It's --</p>	<p>1 A I don't. No.</p> <p>2 Q Do you have any recollection --</p> <p>3 A No. I mean, I -- I think -- I think there</p> <p>4 was a sales meeting in Vegas. And I'm pretty sure I</p> <p>5 gave a presentation. But again, I don't know what it</p> <p>6 was or much detail about it seven years ago. No.</p> <p>7 Q Okay. But in early 2014 you gave a</p> <p>8 presentation in Vegas at a sales meeting; right?</p> <p>9 A I think so. I just don't remember actually</p> <p>10 doing it.</p> <p>11 Q What was the purpose of that sales meeting?</p> <p>12 A Probably get a better idea from -- from</p> <p>13 Catalyst. I mean, I sort of know, generically, what</p> <p>14 sales meetings are for.</p> <p>15 And I saw what Catalyst did, which is kind</p> <p>16 of normal. They got their sales people together and</p> <p>17 told them goals and objectives and what to do.</p> <p>18 Q Okay. At that conference in Vegas, you</p> <p>19 presented to the Catalyst wholesalers; right?</p> <p>20 A I think so. It -- it was -- it was, to be,</p> <p>21 you know -- just for some color, it was different at</p> <p>22 every sales meeting. There was some presentations,</p>

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<p>1 there was some roundtable discussions.</p> <p>2 So I don't remember this particular one,</p> <p>3 what the format was, what was going on. Again, but,</p> <p>4 you know there were some --</p> <p>5 Q You don't --</p> <p>6 A -- interactions between me and sales people</p> <p>7 in Vegas in -- in 2014, I think.</p> <p>8 Q I'm sorry. Could the court reporter read</p> <p>9 back the answer?</p> <p>10 REPORTER: One moment.</p> <p>11 MR. WASSERMAN: I apologize for talking</p> <p>12 over you at the beginning, Mr. Walczak.</p> <p>13 (The reporter replayed the record as</p> <p>14 requested.)</p> <p>15 BY MR. WASSERMAN:</p> <p>16 Q So Mr. Walczak, to clarify, you said there</p> <p>17 was some interaction between you and sales people at</p> <p>18 the sales meeting in 2014?</p> <p>19 A Yeah. That's correct.</p> <p>20 Q Okay. And the sales people at Catalyst are</p> <p>21 called wholesalers; right?</p> <p>22 A Yes.</p>	<p>1 A Yeah. I think that's fair.</p> <p>2 Q And part of the purpose of your presentation</p> <p>3 to the wholesalers was so they could explain to</p> <p>4 investment advisors how the Fund managed risk; right?</p> <p>5 A I -- I can't say to what level of detail.</p> <p>6 That's not something that would come to my mind.</p> <p>7 My sense was they wanted to explain a little</p> <p>8 bit more about the instruments used and the strategies</p> <p>9 and how the Fund made money.</p> <p>10 Q Okay. Your presentation to the wholesalers</p> <p>11 in early 2014 included a PowerPoint presentation;</p> <p>12 right?</p> <p>13 A Again, I -- I just don't remember how the</p> <p>14 communication occurred in 2014 because it was pretty</p> <p>15 much different every year.</p> <p>16 Q Okay. There was a sales meeting every year?</p> <p>17 A Yes. I didn't attend them all, but there</p> <p>18 was one very year.</p> <p>19 Q Do you recall how many you attended?</p> <p>20 A No.</p> <p>21 Q Are you able to pull up Exhibit 16?</p> <p>22 A That's the PowerPoint? Yes. I have it.</p>
Page 75	Page 77
<p>1 Q And they're responsible for meeting with</p> <p>2 investment advisors and discussing the fund with</p> <p>3 investment advisors; correct?</p> <p>4 A I know they do that. I -- I don't, you</p> <p>5 know -- I don't manage or didn't manage them. So I</p> <p>6 don't know their complete list of responsibilities.</p> <p>7 But I know that's something they did as a part of</p> <p>8 their job.</p> <p>9 Q Okay. And the goal is to get investment</p> <p>10 advisors to invest their clients' funds in the Hedged</p> <p>11 Futures Strategy Fund and other Catalyst funds; right?</p> <p>12 A Yeah. Again, I -- I don't know what goals</p> <p>13 were set for the -- the sales people. But I know that</p> <p>14 was a part of their activity. It seems to make sense.</p> <p>15 Q Okay. And part of the purpose of the sales</p> <p>16 meetings, generally, was, at least in part, for you to</p> <p>17 educate the wholesalers about the Hedged Futures</p> <p>18 Strategy Fund; right?</p> <p>19 A Yes.</p> <p>20 Q So that when they spoke to investment</p> <p>21 advisors, they knew what the Fund was and what the</p> <p>22 strategy was, et cetera.</p>	<p>1 Q Does this document look familiar to you?</p> <p>2 A Yeah. I mean, like I said on the first go-</p> <p>3 round, I -- I've seen this format of document before.</p> <p>4 I know there are many versions of it. So this is</p> <p>5 probably one of them.</p> <p>6 Q Okay. One moment. I want to open it to</p> <p>7 share my screen with you.</p> <p>8 Okay. Mr. Walczak, can you see the document</p> <p>9 in the screenshare?</p> <p>10 A I can.</p> <p>11 Q And you can see at the top that the file</p> <p>12 name is SEC_04_0371172?</p> <p>13 A Yes. Yep.</p> <p>14 Q And if I click over to the Info tab, do you</p> <p>15 see that it indicates "Last Modified By Ed Walczak"?</p> <p>16 A Yes.</p> <p>17 Q And the last modified date --</p> <p>18 I'm sorry. Go ahead.</p> <p>19 A I was just going to say I don't -- oh, I</p> <p>20 don't recognize the author, but it looks like my</p> <p>21 name's on the modification, so. Okay. Go ahead.</p> <p>22 Q Yes. And the Info indicates that it was</p>



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<p>1 last modified on May 6th of 2014?</p> <p>2 A Yes.</p> <p>3 Q Okay. Does that refresh your recollection</p> <p>4 as to whether this is a presentation that you used at</p> <p>5 the sales meeting in May of 2014?</p> <p>6 A Honestly, no. I mean, the -- the data looks</p> <p>7 that way, but I can only tell you what you asked about</p> <p>8 my recollection is I don't have one -- about the</p> <p>9 details of what went on in this meeting. But --</p> <p>10 Oh, go ahead.</p> <p>11 Q If you want to take a moment to scroll</p> <p>12 through it.</p> <p>13 A All right. I will do that on my screen, if</p> <p>14 I can. Okay.</p> <p>15 Q Turning your attention, specifically, to</p> <p>16 slide 6.</p> <p>17 A All right.</p> <p>18 Q The bullet with the header "The Fund employs</p> <p>19 a distinct Risk management Strategy." Do you see</p> <p>20 that?</p> <p>21 A Yes.</p> <p>22 Q And you see the language "We use a specific</p>	<p>1 I'm sorry. You know, Mr. Walczak, can we</p> <p>2 actually look at -- I'm sorry to change gears. Can we</p> <p>3 actually look at 14?</p> <p>4 A Well, I've got 13 up. So I'm ready if we</p> <p>5 have to come back to that. Here's 14. Okay.</p> <p>6 Q My apologies. Fourteen, please, which is</p> <p>7 the investor presentation dated 1st Quarter of 2014.</p> <p>8 A Okay.</p> <p>9 Q Okay. If you could scroll down to slide 7</p> <p>10 on Exhibit 14.</p> <p>11 A Okay.</p> <p>12 Q The "Risk Management" bullet there says</p> <p>13 "Every position is initiated on a hedged basis with</p> <p>14 portfolio level stop loss trigger points to limit</p> <p>15 drawdowns." Do you see that?</p> <p>16 A Yup.</p> <p>17 Q And, turning to the PowerPoint, which I</p> <p>18 believe it Exhibit 16.</p> <p>19 A All right.</p> <p>20 Q On slide 6 the Risk Management bullet says</p> <p>21 "In addition to the strategy and tactics we use to</p> <p>22 earn profits, we use a specific set of rules and</p>
Page 79	Page 81
<p>1 set of rules and tactics focused on limiting losses"?</p> <p>2 A Yes.</p> <p>3 Q That's language you included; right?</p> <p>4 A Again, I -- I provided content. I provided</p> <p>5 content that looks like this.</p> <p>6 But there were many documents in which the</p> <p>7 language was changed. So I can't swear that this was</p> <p>8 my exact language.</p> <p>9 Q Okay. Looking back at Exhibit 13 -- and</p> <p>10 hopefully, if you look at Exhibit 13 in the PowerPoint</p> <p>11 and 14 in the screenshare, hopefully you can see both</p> <p>12 at the same time.</p> <p>13 A Okay. Let me get rid of this on my -- all</p> <p>14 right.</p> <p>15 So now we're looking at Exhibit -- which</p> <p>16 one? Which exhibit should I --</p> <p>17 Q Thirteen.</p> <p>18 A Thirteen.</p> <p>19 Q Thirteen.</p> <p>20 A Okay. Thirteen was another PowerPoint? No.</p> <p>21 Q Thirteen was the PowerPoint dated 4th</p> <p>22 Quarter 2013.</p>	<p>1 tactics focused on limiting losses." Do you see that?</p> <p>2 A Yes. Got it.</p> <p>3 Q Okay. The language "we use a specific set</p> <p>4 of rules and tactics focused on limiting losses" does</p> <p>5 not appear in Exhibit 14; right?</p> <p>6 A Hold on. Let's see. No, it doesn't appear</p> <p>7 to. No.</p> <p>8 Q Okay. So does that refresh your</p> <p>9 recollection at all as to whether you added the</p> <p>10 language "we use a specific set of rules and tactics</p> <p>11 focused on limiting losses"?</p> <p>12 A Well, actually, it reminds me of how many</p> <p>13 different versions of this thing there are and how the</p> <p>14 language differs.</p> <p>15 Which, again, I don't know whether -- it's</p> <p>16 likely in a final version that -- Catalyst was -- was,</p> <p>17 you know, the -- the last editor.</p> <p>18 But who knows? Who knows who changed the</p> <p>19 language. All I know, I -- I submitted various</p> <p>20 versions and snippets of content to Catalyst. And</p> <p>21 they came up with the presentation.</p> <p>22 Q Okay. But this PowerPoint presentation that</p>

<p style="text-align: right;">Page 82</p> <p>1 you gave at the sales meeting in 2014 indicates that</p> <p>2 it was last edited by you; right?</p> <p>3 A Yeah. I, you know, honestly, I don't know.</p> <p>4 Maybe they misspelled my name and I had to change it.</p> <p>5 I'm not sure what that edit might have been. So I --</p> <p>6 I -- again, I can't speculate.</p> <p>7 Q Who else, besides you, might have added the</p> <p>8 language "we use a specific set of rules and tactics</p> <p>9 focused on limiting losses."</p> <p>10 MR. KOPECKY: Okay. I'm just going to</p> <p>11 object to -- I didn't get in because I was muted.</p> <p>12 I object to the foundation of the last</p> <p>13 question. You're drawing a line that doesn't work.</p> <p>14 And I object to the foundation of this</p> <p>15 question. The metadata doesn't --</p> <p>16 MR. WASSERMAN: Your objection is noted</p> <p>17 for the record, Jim. The witness can answer the</p> <p>18 question.</p> <p>19 MR. KOPECKY: Yes. I know. You're --</p> <p>20 MR. WASSERMAN: I'd ask you not to make</p> <p>21 speaking objections. You can just object for the</p> <p>22 record. And the witness can answer.</p>	<p style="text-align: right;">Page 84</p> <p>1 Catalyst.</p> <p>2 I have no idea of their internal</p> <p>3 workings, who is responsible for review and if they</p> <p>4 use outside agencies, who adjusted language. I just</p> <p>5 don't know what Catalyst did with this stuff.</p> <p>6 I do know that there's a presentation</p> <p>7 that I used and passed through Catalyst. And Catalyst</p> <p>8 said, "Hey, this is good stuff." And so I used it.</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q Okay. It's certainly possible that you</p> <p>11 drafted the language I just quoted; right?</p> <p>12 A It's also possible that I did not.</p> <p>13 Q Okay. Who, specifically, might have drafted</p> <p>14 it, other than yourself?</p> <p>15 A So I'll -- I'll repeat, again, that I don't</p> <p>16 know how Catalyst operates. I don't know their review</p> <p>17 process. I don't know who, at that moment in time,</p> <p>18 looked at these documents, may have edited the</p> <p>19 documents, may have done who knows what. I just don't</p> <p>20 know.</p> <p>21 Q Okay. Can we scroll down? Well, actually,</p> <p>22 you're seeing the screen that I'm sharing right now</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. WASSERMAN:</p> <p>2 Q Mr. Walczak, the question --</p> <p>3 MR. KOPECKY: You can answer, Ed. Go</p> <p>4 ahead.</p> <p>5 THE WITNESS: Yeah. Can you repeat the</p> <p>6 question for me after this --</p> <p>7 MR. WASSERMAN: I can. I would ask Mr.</p> <p>8 Kopecky not to interrupt between the question and the</p> <p>9 answer. The objection to the question is noted --</p> <p>10 MR. KOPECKY: No. I'm going to make my</p> <p>11 objection between the question and the answer.</p> <p>12 BY MR. WASSERMAN:</p> <p>13 Q The question is: Are you aware of anyone</p> <p>14 else, besides yourself, that would have added the</p> <p>15 language "We use a specific set of rules and tactics</p> <p>16 focused on limiting losses"?</p> <p>17 MR. KOPECKY: Objection; form;</p> <p>18 foundation.</p> <p>19 Go ahead, Ed.</p> <p>20 THE WITNESS: Okay. So this time I</p> <p>21 remember the question. And as I -- as I've previously</p> <p>22 stated, I submitted various versions of content to</p>	<p style="text-align: right;">Page 85</p> <p>1 with the PowerPoint.</p> <p>2 I'm scrolling down to slide 9. There's a</p> <p>3 bullet at the bottom that says "A Risk Management</p> <p>4 Strategy explicitly focused on limiting losses by</p> <p>5 hedging individual positions at initiation, ongoing</p> <p>6 adjustment based on well-defined risk parameters, and</p> <p>7 aggregate portfolio stop loss measures."</p> <p>8 Could you take a moment to sort of review</p> <p>9 that and then compare it to slide 10 on Exhibit 14,</p> <p>10 Mr. Walczak?</p> <p>11 A Okay. All right. I have slide 10 up, and I</p> <p>12 can see slide 9.</p> <p>13 Q Specifically, you see slide 10 on Exhibit 14</p> <p>14 and slide 9 on Exhibit 16; right?</p> <p>15 A Yes.</p> <p>16 Q Okay. The language "aggregate portfolio</p> <p>17 stop loss measures" does not appear in Exhibit 14;</p> <p>18 right?</p> <p>19 A Correct.</p> <p>20 Q Okay. Is the language "aggregate portfolio</p> <p>21 stop loss measures" your language that you added for</p> <p>22 the sales presentation?</p>



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<p>1 A I don't recall if that was my language.</p> <p>2 Q Do you also see that in the phrase that</p> <p>3 starts "based on well-defined," the word "proven" is</p> <p>4 deleted from Exhibit 14 to Exhibit 16?</p> <p>5 A I'm sorry. I'm a little bit confused, here.</p> <p>6 So let's --</p> <p>7 Q The question was confusing. I apologize,</p> <p>8 Mr. Walczak. I'll do it again.</p> <p>9 In Exhibit 14, at the bottom, the slide says</p> <p>10 "based on well-defined and proven risk parameters."</p> <p>11 Do you see that?</p> <p>12 A Well, at the bottom it says "There is no</p> <p>13 guarantee that any investment strategy will achieve</p> <p>14 its objectives, generate profits or avoid losses."</p> <p>15 Oh, do you mean the last bullet point?</p> <p>16 Q I do.</p> <p>17 A Okay. All right. I'm sorry.</p> <p>18 Q Do you see that it says "based on well-</p> <p>19 defined and proven risk parameters"?</p> <p>20 A Yes.</p> <p>21 Q Okay. And do you see that on slide 9 on</p> <p>22 Exhibit 16 the word "proven" does not appear?</p>	<p>1 "proven" was removed?</p> <p>2 A No, I do not.</p> <p>3 Q Okay. Do you recall editing this language</p> <p>4 at all in preparation for the sales presentation?</p> <p>5 A No, I don't recall.</p> <p>6 Q What do you recall of your preparation for</p> <p>7 the sales presentation in Las Vegas in early 2014?</p> <p>8 A Well, I -- I recall -- honestly, not to be</p> <p>9 facetious, but I recall not wanting to go. That's my</p> <p>10 strongest recollection.</p> <p>11 Secondly, I remember -- well, I think --</p> <p>12 which one was this? This was 2014?</p> <p>13 Remember, you know, Kimberly Rios worked on</p> <p>14 some of these. And -- and then I edited some. And</p> <p>15 then Catalyst edited.</p> <p>16 And it, you know -- honestly, I don't</p> <p>17 remember this specific one. But nor any of the</p> <p>18 others, really. 'Cause it just wasn't of interest to</p> <p>19 me.</p> <p>20 Q Okay. Why wasn't it of interest to you?</p> <p>21 A I -- my primary interest is portfolio</p> <p>22 management, not sales and marketing. That's all.</p>
Page 87	Page 89
<p>1 A Well, I -- I don't see it, no.</p> <p>2 It looks like a different slide. I mean,</p> <p>3 there's no bolded risk management strategy or anything</p> <p>4 on there. That's what --</p> <p>5 Q Well, both say "ongoing adjustment based on</p> <p>6 well-defined;" right?</p> <p>7 A Yes. Okay. Got it. That's the third</p> <p>8 bullet on page 9. That's the easiest way for me to</p> <p>9 differentiate it.</p> <p>10 Q So the third bullet on slide 10 of Exhibit</p> <p>11 14 says "ongoing adjustment based on well-defined and</p> <p>12 proven risk parameters;" right?</p> <p>13 A Right.</p> <p>14 Q Slide 9 on Exhibit 16 says "ongoing</p> <p>15 adjustment based on well-defined risk parameters;"</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q Okay. So the language is the same except</p> <p>19 that the word "proven" is removed in Exhibit 16;</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q I'm wondering if you know why the word</p>	<p>1 Q Give me one moment. It's possible that you</p> <p>2 inserted the phrase "aggregate portfolio stop loss</p> <p>3 measures" on slide 9; correct?</p> <p>4 A It's also possible that I didn't.</p> <p>5 As I said, there -- so just let me provide</p> <p>6 some context, here, so we don't have misrepresentation</p> <p>7 based on sound bites. The --</p> <p>8 MR. KOPECKY: Ed, sorry to cut you off.</p> <p>9 And maybe we do need to take a couple minute break for</p> <p>10 all of you guys. But I don't think you were answering</p> <p>11 his question.</p> <p>12 THE WITNESS: All right. My bad.</p> <p>13 MR. KOPECKY: But do we want to take</p> <p>14 five minutes, or do we want to keep going, Sam?</p> <p>15 MR. WASSERMAN: I would like another</p> <p>16 few minutes just to finish with these presentations.</p> <p>17 And then we can take a break.</p> <p>18 MR. KOPECKY: Okay. And, then, it's up</p> <p>19 to you. Maybe we can keep going. I'm just feeling</p> <p>20 like you guys are starting to get on separate pages,</p> <p>21 and its getting less productive. So I want to bring</p> <p>22 everybody back. Now start with the question again?</p>

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<p>1 MR. WASSERMAN: Yes.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q Mr. Walczak, it's possible that you inserted</p> <p>4 the phrase "aggregate portfolio stop loss measures" on</p> <p>5 slide 9 of Exhibit 16; correct?</p> <p>6 A It's possible.</p> <p>7 Q Okay. Who else, if anyone, might have</p> <p>8 drafted that language?</p> <p>9 A As I said, I don't know. I submitted this</p> <p>10 to Catalyst.</p> <p>11 Catalyst process is not transparent to me.</p> <p>12 I don't know how they reviewed it. I don't know who</p> <p>13 might have edited it. So I -- I honestly have no</p> <p>14 idea.</p> <p>15 Q Okay. It's possible that you deleted the</p> <p>16 word "proven" from the language that appears in the</p> <p>17 phrase immediately prior in slide 9 of Exhibit 16;</p> <p>18 correct?</p> <p>19 A Yes, it's possible. And, to be fair, it's</p> <p>20 possible that I did not.</p> <p>21 Q Okay. Who else, besides you, might have</p> <p>22 deleted the word "proven" from that phrase?</p>	<p>1 BY MR. WASSERMAN:</p> <p>2 Q I'm sorry. How else would have they</p> <p>3 reviewed it, prior to you presenting, other than by</p> <p>4 you e-mailing it to them?</p> <p>5 A I might have arrived in Las Vegas and handed</p> <p>6 it to someone.</p> <p>7 Q Okay. Well, in that case, how would --</p> <p>8 you're talking about handing a hard copy to somebody?</p> <p>9 A Yes.</p> <p>10 Q But in that case, they wouldn't be giving it</p> <p>11 back to you with typed edits; right?</p> <p>12 A I don't know. I mean, again, I don't --</p> <p>13 don't remember the details.</p> <p>14 I mean, certainly, in a presentation,</p> <p>15 it's -- it's not impossible -- in presentations I've</p> <p>16 done in the past, I've made handwritten notes, I've</p> <p>17 had other people's handwritten notes to remind me how</p> <p>18 to amplify or amend statements. Sometimes time</p> <p>19 constraints -- so, yeah, there's a lot of</p> <p>20 possibilities.</p> <p>21 MR. WASSERMAN: Okay. We can go off</p> <p>22 the record. Why don't we take 10 minutes and come</p>
Page 91	Page 93
<p>1 A Any number of people at Catalyst who</p> <p>2 reviewed the document for compliance purposes.</p> <p>3 Q Are you sure that this sales presentation</p> <p>4 was reviewed for compliance purposes?</p> <p>5 A I am not sure.</p> <p>6 Q Okay. Presentations were reviewed for</p> <p>7 compliance purposes before they were given to the</p> <p>8 wholesalers to show investment advisors; right?</p> <p>9 A That's my understanding. But I have no way</p> <p>10 to verify that.</p> <p>11 Q Okay. So do you recall sending this sales</p> <p>12 presentation to anyone at Catalyst before you gave it</p> <p>13 in Las Vegas in 2014?</p> <p>14 A I don't recall. But that would be my normal</p> <p>15 practice.</p> <p>16 Q Okay. There would be e-mail records of that</p> <p>17 if you did; right?</p> <p>18 A I don't know.</p> <p>19 Q Well, how else would they have seen it?</p> <p>20 MR. KOPECKY: That's a different</p> <p>21 question.</p> <p>22 Objection; form; foundation.</p>	<p>1 back at 11:45.</p> <p>2 VIDEOGRAPHER: The time is 10:34 a.m.;</p> <p>3 this ends Unit No. 2. We're off the record.</p> <p>4 (Off the record.)</p> <p>5 VIDEOGRAPHER: The time is 10:48 a.m.;</p> <p>6 this begins Unit No. 3. We're on the record.</p> <p>7 BY MR. WASSERMAN:</p> <p>8 Q Mr. Walczak, what does the phrase "upside</p> <p>9 capture" mean to you?</p> <p>10 A I don't -- I don't -- don't know it</p> <p>11 firsthand. It's a term used in, I think -- in</p> <p>12 performance reporting for funds and fund vehicles.</p> <p>13 It's not something I've used.</p> <p>14 Q Really? You've never used the phrase</p> <p>15 "upside capture" to describe certain aspects of the</p> <p>16 Hedged Futures Strategy Fund?</p> <p>17 A I -- I don't recall. It's not -- it's not a</p> <p>18 phrase that's familiar or comfortable to me.</p> <p>19 Q What was the strategy that you used in the</p> <p>20 Fund to try to profit from a rising market, if any?</p> <p>21 A A rising market -- what was the last part of</p> <p>22 your question?</p>

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<p>1 Q Sorry. Let me rephrase.</p> <p>2 What was the strategy that you used, if any,</p> <p>3 to try to profit from a rising market?</p> <p>4 A Apologies. I was unsuccessful in</p> <p>5 disconnecting my phone from my computer, and it just</p> <p>6 rang. So let's go back. Okay.</p> <p>7 So fundamentally, I -- I didn't speculate on</p> <p>8 market direction. So there were certain strategies</p> <p>9 that would make money if the market went up. But --</p> <p>10 or -- or actually, a very specific strategy that it --</p> <p>11 it would profit if the market went higher.</p> <p>12 We could also make money if it didn't. So,</p> <p>13 you know, I didn't specifically jump in and say,</p> <p>14 "Let's -- here's what I'm going to do to make money if</p> <p>15 the market goes up."</p> <p>16 Q Okay. What was the specific strategy that</p> <p>17 you used to try to make money if the market went up?</p> <p>18 A Well, I -- I think I just said I didn't take</p> <p>19 a market view. There were certain --</p> <p>20 Q Mr. Walczak, I'm not asking whether you took</p> <p>21 a market view.</p> <p>22 You just referred to a specific strategy to</p>	<p>1 but I think there were times. I -- I don't recall all</p> <p>2 of the specific trades, but at various points in the</p> <p>3 Fund -- in -- in trading, I would enter a butterfly</p> <p>4 spread.</p> <p>5 Q Okay. At any point, was the main strategy</p> <p>6 to profit in a rising market using a -- sorry. Let me</p> <p>7 rephrase.</p> <p>8 At any point, was the main strategy to enter</p> <p>9 positions as a butterfly?</p> <p>10 A Yeah. I mean, I oftentimes legged into to</p> <p>11 the butterfly spread from a ratio because they have a</p> <p>12 pretty similar return profile, so --</p> <p>13 Q What do you mean by "legged into"?</p> <p>14 A I mean sometimes I would enter the ratio</p> <p>15 part, and -- and then enter the upper leg to form a</p> <p>16 butterfly. Sometimes I'd already had the upper leg in</p> <p>17 place, and I'd enter a ratio to form a butterfly.</p> <p>18 Q Sorry. My question was: When you initiated</p> <p>19 a position, did you ever initiate it as a butterfly</p> <p>20 spread rather than a call ratio spread?</p> <p>21 A Yeah. I -- I can't say definitively whether</p> <p>22 I did or didn't. You know, because, again, there are</p>
Page 95	Page 97
<p>1 try to profit from a rising market. What was that</p> <p>2 specific strategy?</p> <p>3 A Well, we entered -- I entered call ratio</p> <p>4 spreads and call butterfly spreads above the market</p> <p>5 that would make money if the market went higher.</p> <p>6 Q Okay. When you entered positions, which of</p> <p>7 those two options combinations were you using?</p> <p>8 A Which two are you referring to?</p> <p>9 Q You just referred to call ratio spreads and</p> <p>10 butterfly spreads.</p> <p>11 A Yes.</p> <p>12 Q When you entered positions, initially, which</p> <p>13 of those two did you use?</p> <p>14 A It depended on the market conditions.</p> <p>15 Q How so?</p> <p>16 A Well, if -- if pricing in the marketplace</p> <p>17 was favorable to a butterfly spread compared to a</p> <p>18 ratio, I would enter a butterfly spread.</p> <p>19 Q So are you saying that there were instances</p> <p>20 where, to initiate a position, you initiated as a</p> <p>21 butterfly spread?</p> <p>22 A Yeah. That was actually relatively rare,</p>	<p>1 a lot of different trades, and -- and so, you know,</p> <p>2 without -- without a history in front of me I can't</p> <p>3 say that -- whether I did or didn't.</p> <p>4 I know that, like I said, normally I would</p> <p>5 enter -- I would -- I guess it was more common I would</p> <p>6 enter a ratio spread, not a butterfly spread.</p> <p>7 Q And did you ever refer to the call ratio</p> <p>8 strategy as the strategy that you used for "upside</p> <p>9 capture"?</p> <p>10 A I -- I -- like I said, that upside capture</p> <p>11 phrase -- maybe I adopted it from hearing it enough,</p> <p>12 but it's -- it's not a natural phrase to me.</p> <p>13 It's, I mean -- yeah. I mean, I won't argue</p> <p>14 with words, but like I said, that's -- that sounds</p> <p>15 like a -- a mutual fund performance term, is what it</p> <p>16 sounds like to me. I don't remember whether I used it</p> <p>17 or not.</p> <p>18 Q What does it mean to you, sitting here</p> <p>19 today?</p> <p>20 A It's -- it's some measure of making money</p> <p>21 when the market was higher.</p> <p>22 Q Okay. Over the course of your managing the</p>

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<p>1 Fund, was entering butterfly spreads ever the main</p> <p>2 strategy for upside capture?</p> <p>3 A Well, again, I didn't make a big</p> <p>4 distinguishment between the ratio spreads and the</p> <p>5 butterflies because they -- they have a pretty similar</p> <p>6 profile. And they -- oftentimes one turned into the</p> <p>7 other, just in terms of how I managed the Fund.</p> <p>8 So -- so to me, they're -- they're one and</p> <p>9 the same thing.</p> <p>10 Q I'm sorry. That's not quite what I'm</p> <p>11 asking.</p> <p>12 I'm asking if entering butterfly spreads was</p> <p>13 ever the main strategy you used for upside capture?</p> <p>14 MR. KOPECKY: I object to foundation.</p> <p>15 Go ahead.</p> <p>16 A Like I said, most of the time I did not use</p> <p>17 a butterfly spread. I entered a ratio spread.</p> <p>18 Q Okay. So entering butterfly spreads was</p> <p>19 never the main strategy?</p> <p>20 A Not entering a butterfly spread at</p> <p>21 initiation. No.</p> <p>22 Q In what circumstances would you leg into a</p>	<p>1 I have 17. And I just refreshed again. Okay. I have</p> <p>2 17 and 18. Yeah.</p> <p>3 Q Okay. Can you look at Exhibit 17, please.</p> <p>4 A Okay.</p> <p>5 Q It appears to be an e-mail from Daniel</p> <p>6 Saffrin to yourself, Jeremy O'Keefe and Kimberly Rios.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And it appears to be dated February 15,</p> <p>10 2017, at 10:40 a.m.; correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. Who is Daniel Saffrin?</p> <p>13 A He -- he -- and my hesitancy is we -- he</p> <p>14 started as an intern and became a full-time analyst.</p> <p>15 So I don't remember when -- I think -- I think it was</p> <p>16 right around there, I think.</p> <p>17 But anyway, he was -- he was fulfilling</p> <p>18 either a part-time or a permanent analyst role.</p> <p>19 Q Okay. And who's Jeremy O'Keefe?</p> <p>20 A He's one of the primary executing brokers</p> <p>21 for the Fund, on the floor.</p> <p>22 Q Was it typical, around this time in February</p>
Page 99	Page 101
<p>1 butterfly spread?</p> <p>2 A If -- if the market began to rise rapidly,</p> <p>3 that was a pretty common hedging technique -- would be</p> <p>4 to buy it at -- in fact, buy more than one additional</p> <p>5 call on top of a ratio spread to -- to cap upside</p> <p>6 exposure.</p> <p>7 Q Okay. Because the call ratio spreads at</p> <p>8 initiation didn't have a cap on exposure; right?</p> <p>9 A They didn't have an upside cap, no.</p> <p>10 Q Okay. Mr. Walczak, I'm going to mark, as</p> <p>11 Exhibit 17, a document Bates stamped</p> <p>12 Catalyst_005_0200749 and the attachment, which is the</p> <p>13 same prefix 200750. That attachment will be marked as</p> <p>14 Exhibit 18.</p> <p>15 (Exhibits 17 and 18 were marked for</p> <p>16 identification.)</p> <p>17 Q And the attachment is, again, a spreadsheet.</p> <p>18 So Exhibit 18 won't have a stamp. It will just be the</p> <p>19 Excel file that you can open.</p> <p>20 If you click Refresh, do you see those two</p> <p>21 exhibits in the Marked Exhibits folder, Mr. Walczak?</p> <p>22 A Can I have -- I'm sorry. I lost track of --</p>	<p>1 of 2017, for Mr. Saffrin to send you spreadsheets</p> <p>2 detailing the Fund's positions?</p> <p>3 A I don't recall that it was typical, no.</p> <p>4 Q Can you look at Exhibit 18, please.</p> <p>5 A Okay.</p> <p>6 Q Do you recognize Exhibit 18?</p> <p>7 A Not at all.</p> <p>8 Q Do you recognize the type of document that</p> <p>9 it is?</p> <p>10 A It's a spreadsheet. Yes.</p> <p>11 Q Okay. I mean more than the type of program</p> <p>12 that's used to open it.</p> <p>13 Do you recognize the type of content that is</p> <p>14 reflected in the document?</p> <p>15 A Not something we use very often, so I'm --</p> <p>16 I'm guessing, just looking at the fields. Looks like</p> <p>17 positions. Looks like --</p> <p>18 Q Positions of what?</p> <p>19 A Looks like options positions. Looks like</p> <p>20 which FCM they're held in.</p> <p>21 Q Specifically, they're options positions of</p> <p>22 the Fund; right?</p>

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<p>1 A Well, that, I don't know. I -- I mean, this</p> <p>2 e-mail would indicate that. But I don't remember</p> <p>3 first hand. No.</p> <p>4 Q Okay. The FCMs listed in column A, these</p> <p>5 were the FCMs that the Fund used around February 2015;</p> <p>6 correct?</p> <p>7 A Again, I just want to be very precise in my</p> <p>8 response. I -- I don't -- we -- we went -- we used a</p> <p>9 lot of different guys.</p> <p>10 These are all familiar names. Probably so.</p> <p>11 Q Okay. Do you have any reason to believe</p> <p>12 that Mr. Saffrin, on February 15, 2017, would be</p> <p>13 sending you anything other than the positions that the</p> <p>14 Fund held at that time?</p> <p>15 A Well -- well, again, I -- if you're asking</p> <p>16 to verify that these are the Fund positions, obviously</p> <p>17 I can't do that.</p> <p>18 The direct answer to your question is: Of</p> <p>19 course. He's the analyst on the fund. There were a</p> <p>20 lot of reasons why he'd send me spreadsheets of</p> <p>21 partial fund positions, full fund positions,</p> <p>22 miscellaneous options positions, last week's options</p>	<p>1 A Yes.</p> <p>2 Q What is column C of the spreadsheet appear</p> <p>3 to describe?</p> <p>4 A Let me see if I can widen it 'cause it's --</p> <p>5 column C. Okay.</p> <p>6 It looks like a description of an options</p> <p>7 position.</p> <p>8 Q Okay. What does "S&amp;P 3rd Week Optn Feb17C</p> <p>9 2210" mean?</p> <p>10 A So it looks like a February third week</p> <p>11 option expiration. You know, it's an expiration</p> <p>12 period of a particular option.</p> <p>13 Q Okay. Is it a call or a put?</p> <p>14 A Looks like a call. That would be the "C."</p> <p>15 Q And what's the strike price of that option?</p> <p>16 A You're referring to row 2?</p> <p>17 Q Yes.</p> <p>18 A 2210.</p> <p>19 Q So this spreadsheet appears to show a series</p> <p>20 of options with February expiries; correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. And a few March and April expiries on</p>
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<p>1 positions. So yes, there's certainly a lot of reasons</p> <p>2 why he would do that.</p> <p>3 Again, I think the fund positioning at that</p> <p>4 time is -- is a matter of record. But I can't verify</p> <p>5 it. I don't have those records.</p> <p>6 Q Understood. He says in the e-mail "Here are</p> <p>7 HFXAX Positions" for February 15, 2017. Do you see</p> <p>8 that?</p> <p>9 A Yes.</p> <p>10 Q Okay. HFXAX is the ticker for the Hedged</p> <p>11 Futures Strategy Fund; right?</p> <p>12 A Yeah. One of the share classes. Yeah.</p> <p>13 Q So do you have any reason to think that what</p> <p>14 he's sending you is anything other than the Fund's</p> <p>15 positions as of that date?</p> <p>16 A I don't have any reason to think that, no.</p> <p>17 But I just want to be clear that I can't</p> <p>18 verify that. I just don't have any records that -- I</p> <p>19 don't know if he made a mistake. I don't know if</p> <p>20 there's something else going on. That's all.</p> <p>21 Q Understood. Looking at the spreadsheet</p> <p>22 itself, Exhibit 18.</p>	<p>1 the bottom; correct?</p> <p>2 A Let's see. Well, there's third week</p> <p>3 February, there's end of February, there are March,</p> <p>4 there are April, and there are May.</p> <p>5 Q Okay. I'm going to introduce as Exhibit 19</p> <p>6 and 20, documents Bates stamped Catalyst_03_00276 and</p> <p>7 Catalyst_03_00277 respectively.</p> <p>8 If you could first open Exhibit 19, Mr.</p> <p>9 Walczak.</p> <p>10 A I actually have two Exhibit 19s. Do you</p> <p>11 show that? One is larger than the other.</p> <p>12 Q Yes. There are two 19s for some reason. I</p> <p>13 think we can get that fixed on the back end. Let's,</p> <p>14 please, first look at the one that says Exhibit 19</p> <p>15 Catalyst_003_00276.</p> <p>16 (Exhibit 19 was marked for</p> <p>17 identification.)</p> <p>18 A Okay. All right. Is that an e-mail?</p> <p>19 Q Yes. This appears to be an e-mail from</p> <p>20 February 14th of 2017; correct?</p> <p>21 A Yes.</p> <p>22 Q From you to Mr. Schoonover, Ms. Rios, and</p>



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<p>1 Mr. Szilagyi?</p> <p>2 A Yes.</p> <p>3 Q What's happening around this time, Mr.</p> <p>4 Walczak, with respect to the Fund?</p> <p>5 A Well, somewhere in February -- and I, again,</p> <p>6 I don't remember the exact dates -- but somewhere</p> <p>7 around there is when we entered our very large</p> <p>8 drawdown.</p> <p>9 We might have been in the middle of it.</p> <p>10 Honestly, I just don't remember which specific</p> <p>11 February dates what exactly happened.</p> <p>12 Q Understood. But suffice to say that around</p> <p>13 this time, there's a lot of attention being paid to</p> <p>14 the fund both internally by Catalyst and by</p> <p>15 shareholders; right?</p> <p>16 A Yes.</p> <p>17 Q Okay. And around this time, do you recall</p> <p>18 drafting an update to shareholders about what was</p> <p>19 happening?</p> <p>20 A I -- I recall more than one. Yes.</p> <p>21 Q Okay. Is Exhibit -- well, the second</p> <p>22 Exhibit 19, the one that's Bates stamped</p>	<p>1 The first Exhibit 19, the one that ends with</p> <p>2 Bates stamp 276, says "Feel free to edit," by you;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q In other words, you say to the recipients of</p> <p>6 the e-mail, "Feel free to edit." Right? So it</p> <p>7 appears to be a version that you drafted; right?</p> <p>8 A The last question lost me. The -- the first</p> <p>9 question, yes. I sent an e-mail with some document</p> <p>10 and -- and told Catalyst to feel free to edit.</p> <p>11 I -- I'm pretty certain I recall --</p> <p>12 reinforced by my previous testimony earlier -- not</p> <p>13 today, but earlier with you or one of your</p> <p>14 colleagues -- that there were significant edits made.</p> <p>15 So here today, looking at this document, I</p> <p>16 don't know which version it is. I have no way to</p> <p>17 understand --</p> <p>18 Q I'm not asking whether it was the final</p> <p>19 version or whether it was the version that was sent to</p> <p>20 shareholders.</p> <p>21 I'm just asking whether this e-mail</p> <p>22 indicates to you that it's your draft that's attached.</p>
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<p>1 Catalyst_003_00277, an update that you drafted for</p> <p>2 February 14, 2017?</p> <p>3 A Let me -- so this is the second Exhibit 19?</p> <p>4 Q Yes.</p> <p>5 A Okay.</p> <p>6 Q It's the attachment to the first Exhibit 19.</p> <p>7 A All right. So all right. Load it up.</p> <p>8 Okay. All right. I see that.</p> <p>9 Q Okay. Is this one of the updates that you</p> <p>10 drafted for shareholders at that time?</p> <p>11 A So I don't know what version this is. I</p> <p>12 remember -- again, from my e-mail asking Catalyst to</p> <p>13 edit, I remember they did make some pretty significant</p> <p>14 edits.</p> <p>15 In fact, I recall a previous testimony where</p> <p>16 you or one of your colleagues asked me about it. So</p> <p>17 looking at this now, I don't know what version it is,</p> <p>18 whether or to what extent it was my original language</p> <p>19 or edited language. But it looks like one of the</p> <p>20 updates.</p> <p>21 Q Okay. Sorry, I'm having trouble navigating</p> <p>22 between these two.</p>	<p>1 A Well, that's -- that's the point. Whether</p> <p>2 it's my draft or Catalyst's final version, I can't</p> <p>3 tell you.</p> <p>4 Q Well, it doesn't appear to be Catalyst's</p> <p>5 final version because you're saying "Feel free to</p> <p>6 edit." Right?</p> <p>7 A Oh, this was the -- you're telling me this</p> <p>8 document was attached to that e-mail?</p> <p>9 Q Yes.</p> <p>10 A Well, if this was attached to the e-mail --</p> <p>11 again, if -- I don't have a physical way of verifying</p> <p>12 that. As I said, I know it was edited a number of</p> <p>13 times. This may have been what I sent to them, but I</p> <p>14 can't -- I can't verify that. I don't have my</p> <p>15 original --</p> <p>16 Q You drafted the initial draft of the letter;</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q Okay. And this appears to be that initial</p> <p>20 draft; does it not?</p> <p>21 A I -- I -- again, you're showing a document.</p> <p>22 You -- I'll take it on faith that you -- this was the</p>

<p style="text-align: right;">Page 110</p> <p>1 document you say was attached to the e-mail. But I</p> <p>2 can't -- I can't sit here and confirm it to you.</p> <p>3 If you -- if you know this to be the</p> <p>4 document attached to the e-mail, well, that's -- then</p> <p>5 you have your answer. But I can't confirm it. You're</p> <p>6 asking me the question.</p> <p>7 Q But the question is whether it appears to be</p> <p>8 your initial draft.</p> <p>9 MR. KOPECKY: Asked and answered</p> <p>10 BY MR. WASSERMAN:</p> <p>11 Q You can answer the question, Mr. Walczak.</p> <p>12 A So looking at this document. I'm looking at</p> <p>13 a document on the screen -- of a document that I have</p> <p>14 prior knowledge that was dramatically edited. I can't</p> <p>15 tell you which version this is.</p> <p>16 Q Okay. I want to draw your attention to the</p> <p>17 bottom of the first page.</p> <p>18 The first bullet, the second sentence, where</p> <p>19 the draft says "Yesterday and today we simply exited</p> <p>20 all of our February positions in order to contain</p> <p>21 further risk." Do you see that?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 But the bottom line is without -- without</p> <p>2 the fund's position in front of me, I can't tell you</p> <p>3 whether we had exited all the positions at that time.</p> <p>4 Q Okay. How would you have made a mistake in</p> <p>5 drafting this?</p> <p>6 MR. KOPECKY: Objection; calls for</p> <p>7 hypothetical speculation.</p> <p>8 Go ahead and answer, Ed.</p> <p>9 But all day I've been allowing these</p> <p>10 "how could you have," "might have," speculative</p> <p>11 questions. And I'm objecting to them.</p> <p>12 A So -- so perhaps there was a trade error.</p> <p>13 Perhaps we were very aggressively exiting positions,</p> <p>14 and it's always possible -- trade errors are not</p> <p>15 uncommon. It's always possible that a position was</p> <p>16 not exited when it was reported that we were.</p> <p>17 It may be that I misunderstood the report.</p> <p>18 It may be that I wrote this in anticipation of having</p> <p>19 exited positions, and at the end of the day when the</p> <p>20 dust settled, so to speak, that it wasn't true.</p> <p>21 Q All right. Could there have been a trade</p> <p>22 error on dozens of options?</p>
<p style="text-align: right;">Page 111</p> <p>1 Q On February 14th of 2017, was this statement</p> <p>2 accurate?</p> <p>3 A I don't know.</p> <p>4 Q Looking back at Exhibit 18 --</p> <p>5 A Oh. Okay. Eighteen's a spreadsheet, yeah?</p> <p>6 Q That appears to reflect a series of options</p> <p>7 positions with February expiries; correct?</p> <p>8 A Correct.</p> <p>9 Q Okay. So does that refresh your</p> <p>10 recollection as to whether the statement from the</p> <p>11 letter that I just read is accurate?</p> <p>12 A No, it does not.</p> <p>13 Q Okay. You don't know one way or another,</p> <p>14 sitting here today, whether the language "We simply</p> <p>15 exited all our February positions" was accurate at the</p> <p>16 time it was written?</p> <p>17 A That's correct. I don't know.</p> <p>18 Q If this is your draft, does that change your</p> <p>19 answer?</p> <p>20 A No. I -- I have no way of knowing whether</p> <p>21 it was accurate or not. I certainly could have made a</p> <p>22 mistake if it was my draft.</p>	<p style="text-align: right;">Page 113</p> <p>1 A Yes.</p> <p>2 Q How so?</p> <p>3 A I mean, there are all sorts of ways that</p> <p>4 errors can occur. And -- and there's no limitation on</p> <p>5 the quantity of errors or their -- their scope.</p> <p>6 I mean -- I mean, I'm not sure how to answer</p> <p>7 the "how so" part.</p> <p>8 Q All right. In the days after February 15th</p> <p>9 of 2015, did you ever learn that there was a trade</p> <p>10 error in this spreadsheet that Mr. Saffrin sent you?</p> <p>11 A I -- I don't recall. I don't recall</p> <p>12 checking. I honestly don't remember even seeing the</p> <p>13 spreadsheet, even today, after looking at it. So I</p> <p>14 don't recall checking it.</p> <p>15 Q Okay. Well, regardless of whether you saw</p> <p>16 the spreadsheet that's been marked Exhibit 18, do you</p> <p>17 recall, at any time after February 15th of 2017, there</p> <p>18 being a major error in the list of fund positions?</p> <p>19 A In the list of -- let -- let me clarify my</p> <p>20 answer. It was not uncommon. And, in this period of</p> <p>21 time, I don't remember specifically.</p> <p>22 But we're talking about an open outcry</p>



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<p>1 trading system whereby transactions are done verbally</p> <p>2 and are recorded by hand on a card and later entered</p> <p>3 into a -- a computer system. So there is certainly</p> <p>4 always the potential for -- for error.</p> <p>5 And in this case, when we were doing a very,</p> <p>6 very large and rapid liquidation, it was certainly</p> <p>7 possible.</p> <p>8 Now, do I recall specifics? Like much of</p> <p>9 this, it's so far in the past, and there was so much</p> <p>10 activity and detail, that no, I can't say truthfully</p> <p>11 that I recall anything one way or the other.</p> <p>12 Q Is it possible that this list of February</p> <p>13 options in the spreadsheet that Mr. Saffrin sent you</p> <p>14 on February 15th -- is it possible that the entire</p> <p>15 list is a mistake?</p> <p>16 A No. I -- well, put it this way: it's</p> <p>17 certainly possible the entire list is a mistake. I</p> <p>18 think it's unlikely.</p> <p>19 It's -- it's not unlikely that Mr. Saffrin,</p> <p>20 an inexperienced intern, would have made an error in</p> <p>21 manually entering positions into a spreadsheet from a</p> <p>22 hard-to-read brokerage statement. So that is</p>	<p>1 time?</p> <p>2 A Let's see. 2013. Both were in college, I</p> <p>3 think. Yeah.</p> <p>4 Q How did you pay for college for them?</p> <p>5 A Took out loans.</p> <p>6 Q For both?</p> <p>7 A I -- I -- honestly, I think so. Yes.</p> <p>8 Q Okay. For the entire tuition or just part</p> <p>9 of it?</p> <p>10 A I don't remember.</p> <p>11 Q Did either of your children attend grad</p> <p>12 school?</p> <p>13 A No.</p> <p>14 Q At the time, in September of 2013, did you</p> <p>15 own your house in Wisconsin?</p> <p>16 A Yes. Yes.</p> <p>17 Q Did you own it outright, or was there a</p> <p>18 mortgage?</p> <p>19 A There was a mortgage.</p> <p>20 Q Did you have any other real estate at the</p> <p>21 time?</p> <p>22 A No.</p>
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<p>1 possible.</p> <p>2 Q Okay. I want to change gears for a few</p> <p>3 minutes. I have a few questions about -- sorry;</p> <p>4 excuse me one second.</p> <p>5 If I sit still for too long, the light in my</p> <p>6 office goes off. So I had to flip it on. Excuse me.</p> <p>7 Changing gears for a moment, I have a few</p> <p>8 questions about your personal situation upon the</p> <p>9 conversion of the fund in September of 2013.</p> <p>10 So taking you back to September of 2013,</p> <p>11 where were you living at the time?</p> <p>12 A September of -- yeah. I was in Madison,</p> <p>13 Wisconsin, at that time.</p> <p>14 Q Okay. You lived with your wife at that</p> <p>15 time?</p> <p>16 A Yes.</p> <p>17 Q Any kids living in the house at that time?</p> <p>18 A No.</p> <p>19 Q Okay. At that time, your kids are grown and</p> <p>20 out of the house?</p> <p>21 A Yes.</p> <p>22 Q Did you have any children in college at the</p>	<p>1 Q Okay. What was the size of the mortgage on</p> <p>2 your house in Wisconsin?</p> <p>3 A I don't remember.</p> <p>4 Q Did you have any other debts besides student</p> <p>5 loans and the mortgage?</p> <p>6 A Maybe. Again, I don't remember.</p> <p>7 Q From September of 2013 through 2016, did you</p> <p>8 acquire any other real estate?</p> <p>9 A At some point -- I don't remember the exact</p> <p>10 date. At some point, yes. And the only hesitancy is</p> <p>11 I -- the 2016 date -- I don't remember if I acquired</p> <p>12 some afterwards or before that.</p> <p>13 Q Okay. What do you have in mind? What other</p> <p>14 real estate have you acquired since 2013?</p> <p>15 A Well, it's -- it's past tense. I have no</p> <p>16 other real estate currently. But during that time I</p> <p>17 bought and sold two properties.</p> <p>18 Q What two properties?</p> <p>19 A A condominium in San Francisco and a home in</p> <p>20 Hawaii.</p> <p>21 Q Okay. When did you buy the condominium in</p> <p>22 San Francisco?</p>

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<p>1 A Well, as I just explained, I don't -- I</p> <p>2 don't recall the dates specifically.</p> <p>3 Q Do you recall a year?</p> <p>4 A No.</p> <p>5 Q You don't recall the year you bought a</p> <p>6 condominium in San Francisco?</p> <p>7 A That's correct.</p> <p>8 Q Do you recall the year that you sold it?</p> <p>9 A Not exactly. Let me think about this. No.</p> <p>10 I get confused on tax years. Maybe 2019; maybe 2020.</p> <p>11 I don't know.</p> <p>12 Q Okay. Did you sell it for more than you</p> <p>13 bought it for?</p> <p>14 A No.</p> <p>15 Q Did you sell it for less than you bought it</p> <p>16 for?</p> <p>17 A Yes.</p> <p>18 Q How much less?</p> <p>19 A I don't know.</p> <p>20 Q What about the house in Hawaii? When did</p> <p>21 you buy it?</p> <p>22 A Don't remember.</p>	<p>1 important to the -- to the matter.</p> <p>2 Q Do you remember approximately how much you</p> <p>3 purchased the house in Hawaii for?</p> <p>4 A Low two millions.</p> <p>5 Q Okay. Do you remember how much you sold the</p> <p>6 house in Hawaii for?</p> <p>7 A No. No.</p> <p>8 Q Do you --</p> <p>9 A It was somewhere, I mean, again, and the</p> <p>10 only reason I know whether I made or lost any money is</p> <p>11 I know I didn't pay any capital gains tax on either</p> <p>12 one.</p> <p>13 And I remember -- yeah. So both of them</p> <p>14 didn't work out as I had hoped from investment</p> <p>15 standpoints, so. Yeah.</p> <p>16 Q Is that why you purchased them? As an</p> <p>17 investment?</p> <p>18 A Part -- part personal use and part</p> <p>19 investment. Yes.</p> <p>20 Q Okay. But just to be clear, do you recall</p> <p>21 whether you sold the house in Hawaii for more than you</p> <p>22 bought it for?</p>
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<p>1 Q Okay. When did you sell it?</p> <p>2 A Again, I -- I just don't have these dates in</p> <p>3 front of me, and I don't have a clear recollection.</p> <p>4 They weren't important.</p> <p>5 Q Can you estimate when you bought the house</p> <p>6 in Hawaii?</p> <p>7 A No. But there are records, there, if that's</p> <p>8 important. I mean, that -- that data can be found. I</p> <p>9 just don't have it on top of my head.</p> <p>10 Q I'm just asking if you remember when you</p> <p>11 bought the house in Hawaii.</p> <p>12 A No.</p> <p>13 Q Or have any estimation of when you bought</p> <p>14 the house in Hawaii?</p> <p>15 A Yeah. Again, I don't trust my memory, as</p> <p>16 you can tell from the conversation.</p> <p>17 So, you know, again, if the data's</p> <p>18 important, we can find that out. But I don't</p> <p>19 remember. I don't want to give you --</p> <p>20 Q Do you recall --</p> <p>21 A I don't want to give you such a bad answer,</p> <p>22 when that's a pretty easy fact to uncover if it's</p>	<p>1 A No. Well, wrong answer.</p> <p>2 I'm certain that I did not sell it at a</p> <p>3 profit.</p> <p>4 Q Okay. Mr. Walczak, how much money,</p> <p>5 approximately, did you earn from managing the Hedged</p> <p>6 Futures Fund, from 2015 through 2018?</p> <p>7 A I don't know.</p> <p>8 Q I'm going to mark a few exhibits if you</p> <p>9 could give me a moment.</p> <p>10 Jim and Mr. Walczak, if you want to take two</p> <p>11 minutes to go off the record, we can do that. This is</p> <p>12 going to take me a couple minutes. But if we can only</p> <p>13 take a few, and just be right back.</p> <p>14 VIDEOGRAPHER: The time is 11:26 a.m.</p> <p>15 We're off the record.</p> <p>16 (Off the record.)</p> <p>17 VIDEOGRAPHER: The time is 11:29 a.m.</p> <p>18 We're on the record.</p> <p>19 BY MR. WASSERMAN:</p> <p>20 Q Mr. Walczak, can you pull up Exhibit 20,</p> <p>21 please. This is a document Bates stamped</p> <p>22 Catalyst_03_00277 [sic].</p>

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<p>1 (Exhibit 20 was marked for</p> <p>2 identification.)</p> <p>3 A Twenty. Yes. I have it.</p> <p>4 Q Okay. Do you recognize this document?</p> <p>5 A Looks like a 1099.</p> <p>6 Q From 2014; correct?</p> <p>7 A Correct.</p> <p>8 Q And it reflects that your compensation in</p> <p>9 that tax year was approximately \$593,000; right?</p> <p>10 A Let me find that box.</p> <p>11 Q It's box 7.</p> <p>12 A Yes. I see that. Yep.</p> <p>13 Q Can you pull up Exhibit 21, please.</p> <p>14 (Exhibit 21 was marked for</p> <p>15 identification.)</p> <p>16 Q Is this your 1099 from 2015?</p> <p>17 A Yes, it is.</p> <p>18 Q And it reflects that you made approximately</p> <p>19 5.5 million dollars from Catalyst in 2015?</p> <p>20 A Yes. Correct.</p> <p>21 Q Is that accurate?</p> <p>22 A No way of knowing. I -- I'm assuming it is,</p>	<p>1 A Yeah. Correct. Pretax. Yeah.</p> <p>2 Q Understood. And, finally, can we look at</p> <p>3 Exhibit 24? This is a document that was produced to</p> <p>4 us by Catalyst, Bates stamped CFTC2_00135.</p> <p>5 You see in column E it says "1099 Payments,"</p> <p>6 Mr. Walczak?</p> <p>7 (Exhibit 24 was marked for</p> <p>8 identification.)</p> <p>9 A Yes, I see that.</p> <p>10 Q And the dates are from January through July</p> <p>11 of 2018. Do you see that?</p> <p>12 A Yes, I see that.</p> <p>13 Q Okay. And more specifically, it appears to</p> <p>14 reflect payments made to you in each of those seven</p> <p>15 months.</p> <p>16 A I have no -- I've never seen this</p> <p>17 spreadsheet before. I have no idea what it</p> <p>18 represents.</p> <p>19 Q I understand. But you have seen the 1099s</p> <p>20 that I've shown you before; correct?</p> <p>21 A Yes, that's correct. Yeah.</p> <p>22 Q On its face, this spreadsheet appears to</p>
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<p>1 if that's what Catalyst reported. And it's likely</p> <p>2 what I used for my tax returns.</p> <p>3 Q Okay. Can you pull up Exhibit 22, please.</p> <p>4 (Exhibit 22 was marked for</p> <p>5 identification.)</p> <p>6 A All right. I have it.</p> <p>7 Q And is this your 2016 1099?</p> <p>8 A That's what it appears to be. Yeah.</p> <p>9 Q Okay. And it reflects that you were</p> <p>10 compensated by Catalyst in the amount of approximately</p> <p>11 24.4 million dollars?</p> <p>12 A That's what the box says. Yes.</p> <p>13 Q Can we pull up Exhibit 23, please.</p> <p>14 Is Exhibit 23 your 2017 1099 from Catalyst?</p> <p>15 (Exhibit 23 was marked for</p> <p>16 identification.)</p> <p>17 A Looks to be that way. Looks like a</p> <p>18 different format.</p> <p>19 Let me find -- okay. Yeah. That's what we</p> <p>20 have.</p> <p>21 Q And this document reflects that you made</p> <p>22 approximately 20 million dollars in 2017?</p>	<p>1 show that you were paid over seven million dollars</p> <p>2 from January 2018 through July of 2018. Do you see</p> <p>3 that?</p> <p>4 A Again, this is a spreadsheet produced by who</p> <p>5 knows who.</p> <p>6 Q I'm just asking whether you see the numbers</p> <p>7 in the spreadsheet -- whether you see that we're</p> <p>8 looking at the same thing.</p> <p>9 A Oh, I -- I thought your question was</p> <p>10 different. I -- I'm sorry.</p> <p>11 I see numbers in column N under the name --</p> <p>12 or under the word "Amount." And I don't know what</p> <p>13 they mean.</p> <p>14 Q Okay. Does it sound about right to you that</p> <p>15 you were paid approximately 7.3 million dollars for</p> <p>16 the first seven months of 2018?</p> <p>17 A I don't know.</p> <p>18 Q Okay. The documents we just referred to</p> <p>19 reflect that you were paid approximately 5.5 million</p> <p>20 in 2015, 24.5 million in 2016, and 20 million in 2017;</p> <p>21 right?</p> <p>22 A Yeah. Now, you rattled them off. But</p>

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<p>1 whatever the 1099s said, I won't argue with.</p> <p>2 Q The 1099s for those three years add up to</p> <p>3 about 50 million dollars; right?</p> <p>4 A Again, I -- I'm certain -- I trust that</p> <p>5 you've done the math. But I have not.</p> <p>6 Q So you can take a minute to do the math.</p> <p>7 You have the document in front of you.</p> <p>8 I'm asking whether the amounts you were paid</p> <p>9 in 2015, 2016, and 2017 add up to about 50 million</p> <p>10 dollars.</p> <p>11 A All right. If we would like to spend time</p> <p>12 doing the arithmetic, I'll be happy to do it. It</p> <p>13 sounds like you've done it. But I'll -- I'll be</p> <p>14 cooperative.</p> <p>15 Where were they? All right. 2014.</p> <p>16 September. Yeah. I guess, in my head, plus or minus</p> <p>17 50 million dollars.</p> <p>18 Q And that's not including what you made in</p> <p>19 2018; right?</p> <p>20 A Those numbers don't extend to 2018, nor do</p> <p>21 they deduct income taxes. Correct.</p> <p>22 Q Understood. Mr. Walczak, what is your net</p>	<p>1 (Exhibit 25 was marked for</p> <p>2 identification.)</p> <p>3 Q You'll see that it says "Ziliak Law" at the</p> <p>4 top. And the document was labeled</p> <p>5 "WalczakHFXIXPurchaseSales." Do you see that?</p> <p>6 And you can zoom in and out on this if it's</p> <p>7 hard to read.</p> <p>8 A It's still loading. So Exhibit 25, yeah?</p> <p>9 Q That's right.</p> <p>10 A Okay.</p> <p>11 Q Do you have any reason to believe this</p> <p>12 document doesn't actually reflect your purchase and</p> <p>13 sale of shares in the fund?</p> <p>14 A Well, again, I've never seen the document</p> <p>15 before; don't know anything about it. So I want to</p> <p>16 avoid any false confirmations. But --</p> <p>17 Q You've never seen this document before?</p> <p>18 A No.</p> <p>19 Q But you have no reason to believe that the</p> <p>20 data that was produced by your counsel is inaccurate;</p> <p>21 do you?</p> <p>22 A I've not seen the document before. I don't</p>
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<p>1 worth today, approximately?</p> <p>2 A Today, approximately?</p> <p>3 Q Yes.</p> <p>4 A Seven or eight million dollars.</p> <p>5 Q Okay. Understanding that a lot of that 50</p> <p>6 million dollars went to taxes, how can you explain how</p> <p>7 your net worth today is only seven million dollars?</p> <p>8 A Well, it's kind of a guess, actually. But a</p> <p>9 part -- part is the -- the losses I sustained in the</p> <p>10 drawdowns on mutual funds since I had significant</p> <p>11 portion of my assets in the -- in the same strategy.</p> <p>12 Q Okay. Can you approximate how much your</p> <p>13 losses in the mutual fund were?</p> <p>14 A No.</p> <p>15 Q Rough guess?</p> <p>16 A Again, I don't want to guess. I don't like</p> <p>17 guessing. The data's available. But I -- I don't</p> <p>18 have anything in front of me, now, to even give you an</p> <p>19 approximation.</p> <p>20 Q Okay. Give me one moment. Mr. Walczak,</p> <p>21 I've marked as Exhibit 25 a document that I believe</p> <p>22 was produced to us by your counsel.</p>	<p>1 know whether it's accurate or not.</p> <p>2 Q I'm asking whether you have any reason to</p> <p>3 believe that this document, produced to us by your</p> <p>4 counsel, is inaccurate.</p> <p>5 A Yeah. My reason would be is I don't know</p> <p>6 how it was produced. I don't know where -- where the</p> <p>7 data was sourced from. And I don't -- I've never seen</p> <p>8 it before.</p> <p>9 So those are reasons where I would say to</p> <p>10 you, "Yeah, I have some doubts until I make those</p> <p>11 verifications."</p> <p>12 MR. WASSERMAN: Jim, Zach, do you all</p> <p>13 have any reason to believe that this document does not</p> <p>14 reflect Mr. Walczak's purchases and sales of shares in</p> <p>15 the fund?</p> <p>16 MR. KOPECKY: Well, first of all, it's</p> <p>17 not my deposition, Sam. I don't have to answer your</p> <p>18 questions.</p> <p>19 But I also have never seen this</p> <p>20 document before. The dates look like they only go to</p> <p>21 '15 or '17. I don't know.</p> <p>22 But certainly, how much he lost in the</p>

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<p>1 fund, together with his family, is something that is a</p> <p>2 concrete fact that we can establish in 10 different</p> <p>3 ways if you'd like to do that.</p> <p>4 So you can use this, you know, for the</p> <p>5 deposition purposes. And let's get on with this</p> <p>6 because this isn't --</p> <p>7 MR. WASSERMAN: Okay. I will. That's</p> <p>8 fine. I will move on.</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q Mr. Walczak, assuming this document</p> <p>11 accurately reflects yours and your wife's purchase and</p> <p>12 sale of shares in the fund, could you take a moment to</p> <p>13 review it? And then we can ask a few questions.</p> <p>14 A Go ahead and ask some questions. It's a</p> <p>15 pretty complex document as far as I can tell. A lot</p> <p>16 of numbers.</p> <p>17 Q Okay. The first part of it -- the first</p> <p>18 table appears to reflect transactions in an account</p> <p>19 where the account owner is Edward and Susan Walczak.</p> <p>20 Do you see that?</p> <p>21 A Okay. I see an account owner -- yeah. I</p> <p>22 see a document -- or I see a -- a portion of this</p>	<p>1 know. I can't.</p> <p>2 Q Okay. Could you say, sitting here today,</p> <p>3 whether your losses in the Fund -- your own personal</p> <p>4 investment in the Fund, and that of your wife --</p> <p>5 whether the aggregate of those losses amounted to more</p> <p>6 or less than 10 million dollars?</p> <p>7 A Honestly, Sam, I -- I just don't want to</p> <p>8 answer hypothetical questions when there're facts</p> <p>9 available, and later --</p> <p>10 Q It's not a hypothetical question, Mr.</p> <p>11 Walczak.</p> <p>12 I'm just asking: Sitting here today --</p> <p>13 MR. KOPECKY: Let's not argue. I'm</p> <p>14 with you. I'm instructing him to just answer.</p> <p>15 Can you sit here today; can you tell</p> <p>16 him whether it's more or less than 10 million dollars?</p> <p>17 It's okay to put brackets around it. I don't believe</p> <p>18 this is getting us anywhere, ultimately.</p> <p>19 Ed, but please just answer whether you</p> <p>20 can tell him or not.</p> <p>21 A No.</p> <p>22 MR. KOPECKY: Thank you.</p>
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<p>1 document that says that. Yeah.</p> <p>2 Q You know what, let's put the document aside</p> <p>3 for a second.</p> <p>4 Did you say you were able to estimate,</p> <p>5 approximately, the amount of your losses in the Hedged</p> <p>6 Futures Fund?</p> <p>7 A No. I said I could not.</p> <p>8 Q Could you ballpark whether it was above five</p> <p>9 million or below five million?</p> <p>10 A No.</p> <p>11 Q You couldn't say one way or another, at all,</p> <p>12 whether you lost more or less than five million</p> <p>13 dollars in the Hedged Futures Fund?</p> <p>14 A No. I -- I don't remember. My -- I mean,</p> <p>15 my tax returns have -- have the information. I mean,</p> <p>16 he can get the information. I just can't sit here</p> <p>17 today in my chair and --</p> <p>18 Q I'm just asking you if you, sitting here</p> <p>19 today, can say whether your losses from investing in</p> <p>20 the Fund amounted to more or less than five million</p> <p>21 dollars.</p> <p>22 A Yeah. I -- I think I've said that I don't</p>	<p>1 BY MR. WASSERMAN:</p> <p>2 Q Can you tell me, one way or another, whether</p> <p>3 your losses, and that of your wife, in the Fund were</p> <p>4 more or less than 15 million dollars?</p> <p>5 A No.</p> <p>6 Q Okay. What other reason, besides losses</p> <p>7 from investing in the Hedged Futures Strategy Fund, is</p> <p>8 there for your net worth to be only seven million</p> <p>9 dollars?</p> <p>10 A Other investment losses.</p> <p>11 Q Can you describe what those other investment</p> <p>12 losses are?</p> <p>13 A Trading the same strategy in personal</p> <p>14 accounts.</p> <p>15 Q Okay. Anything else?</p> <p>16 A Losses on the real estate investments we</p> <p>17 talked about.</p> <p>18 Q Anything else?</p> <p>19 A That's all I can think of.</p> <p>20 Q Okay.</p> <p>21 A Well --</p> <p>22 Q Anything else you can think of?</p>

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<p>1 A Well, repeat the question again. I want to</p> <p>2 make sure I've answered it exhaustively.</p> <p>3 Q Yes. Are there any other reasons that you</p> <p>4 can, particularly, sitting here today, say your net</p> <p>5 worth is only seven million dollars after having made</p> <p>6 over 50 million dollars in managing the Fund?</p> <p>7 A Yes. Tax liabilities were the biggest</p> <p>8 portion. Payments to the IRS.</p> <p>9 Q Okay. So tax liability, losses in investing</p> <p>10 in the Hedged Futures Strategy Fund, real estate</p> <p>11 losses, and, I believe, the last one you mentioned was</p> <p>12 trading the strategy in your personal accounts.</p> <p>13 Correct?</p> <p>14 A Correct.</p> <p>15 Q Anything else you can think of?</p> <p>16 A No. Nothing else I can think of, no.</p> <p>17 Q Okay. Can you explain what you mean by</p> <p>18 "trading the strategy" in your personal accounts?</p> <p>19 A I used personal accounts to -- to trade</p> <p>20 similar types of options positions.</p> <p>21 Q Okay. Can you approximate how much you lost</p> <p>22 trading that strategy in your personal account?</p>	<p>1 This being Unit No. 4. We're on the record.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q Okay. Mr. Walczak, I'd like to turn our</p> <p>4 attention to the software you mentioned earlier,</p> <p>5 called OptionVue. Can you describe what OptionVue is?</p> <p>6 A OptionVue is a piece of software that models</p> <p>7 option price behavior.</p> <p>8 Q Okay. When did you first start using</p> <p>9 OptionVue?</p> <p>10 A I can't give you an exact date, but I --</p> <p>11 it's certainly 2010 or earlier.</p> <p>12 Q Are you sure that it was before the Harbor</p> <p>13 Fund was converted to the Hedged Futures Strategy</p> <p>14 Fund?</p> <p>15 A Yes.</p> <p>16 Q If you look in your Marked Exhibits folder,</p> <p>17 you'll see I've put in Exhibits 26, 27, and 28.</p> <p>18 (Exhibits 26 through 28 were marked for</p> <p>19 identification.)</p> <p>20 Q Exhibit 26 is an e-mail dated March 5, 2017,</p> <p>21 from you to Michael Schoonover, Kimberly Rios, Mr.</p> <p>22 Szilagyi, Mr. Miller, and Mr. Amrhein. Do you see</p>
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<p>1 A No.</p> <p>2 Q Can you say whether it was more or less than</p> <p>3 five million dollars?</p> <p>4 A No.</p> <p>5 Q More or less than 10 million dollars?</p> <p>6 A No.</p> <p>7 Q Okay. And to be clear, you cannot, sitting</p> <p>8 here today, remember with any degree of specificity</p> <p>9 the amount of yours and your wife's losses in</p> <p>10 investments in the Hedged Futures Strategy Fund?</p> <p>11 A That -- that's correct. I -- I --</p> <p>12 Q You can't give me any estimation whatsoever?</p> <p>13 A No. Not without looking it up, which I'm</p> <p>14 happy to do, as Mr. Kopecky said.</p> <p>15 Q Okay. Thank you.</p> <p>16 MR. WASSERMAN: Why don't we break --</p> <p>17 if it's okay to break for lunch. We can go off the</p> <p>18 record.</p> <p>19 VIDEOGRAPHER: The time is 11:46 a.m.</p> <p>20 This ends Unit No. 3. We're off the record.</p> <p>21 (Off the record.)</p> <p>22 VIDEOGRAPHER: The time is 12:30 p.m.</p>	<p>1 that?</p> <p>2 A All right. I just pulled it up. Yes.</p> <p>3 Q Okay. Just for the record, who's Mr.</p> <p>4 Miller? I think he's the only one we haven't</p> <p>5 discussed so far who's listed on this e-mail.</p> <p>6 A At the time, I think he was another</p> <p>7 portfolio manager at Catalyst and also a part owner.</p> <p>8 Q Okay. In this e-mail you write "Buy 1500</p> <p>9 futures. Sell 13000 March 2400 Calls." Do you see</p> <p>10 that?</p> <p>11 A I see that.</p> <p>12 Q And you say "Buy 6000 EOM March 2400 calls.</p> <p>13 Mostly fixes theta." You see that?</p> <p>14 A I see that.</p> <p>15 Q "Market risk at roughly 1 x upside. Graphs</p> <p>16 attached." Do you see that?</p> <p>17 A I see that.</p> <p>18 Q So Exhibits 27 and 28 are the graphs that</p> <p>19 are attached to this e-mail. Could you pull up</p> <p>20 Exhibit 27, please.</p> <p>21 And it might appear sideways on your screen.</p> <p>22 On the bottom, you can rotate it with the icon that, I</p>



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<p>1 believe, is the third from the right. Just let me</p> <p>2 know when you've been able to rotate it so --</p> <p>3 A Okay. Got it.</p> <p>4 Q Okay. Does this document show what the</p> <p>5 OptionVue screen looks like?</p> <p>6 A Yeah. This is an OptionVue screen. Sure.</p> <p>7 Q I want to walk through what each of the, or</p> <p>8 most of the, buttons and items on this screen</p> <p>9 represent. So if you could bear with me.</p> <p>10 First of all, what is the box above the</p> <p>11 graph with the red text?</p> <p>12 A Those are the positions that the graph is</p> <p>13 modeling.</p> <p>14 Q Okay. And where would one insert the</p> <p>15 positions that he or she wants the graph to model?</p> <p>16 A In a different screen.</p> <p>17 Q In a different screen.</p> <p>18 On the top left, you see three icons that</p> <p>19 say "Matrix," "Price," and "Volatility" respectively?</p> <p>20 A Correct.</p> <p>21 Q What do those icons do?</p> <p>22 A Let's see. I think the Matrix -- this is an</p>	<p>1 that the options listed in the box above the graph are</p> <p>2 E-mini options?</p> <p>3 A Yes, they are.</p> <p>4 Q The symbol, for example, "-9000Mar 2290c" is</p> <p>5 an E-mini ticker?</p> <p>6 A Well, it's not an E-mini ticker. My</p> <p>7 recollection is what I would typically do is just</p> <p>8 adjust the -- so an E-mini is \$50 per point value. A</p> <p>9 big contract is \$250.</p> <p>10 So typically I would go in and just set</p> <p>11 the -- the parameter in OptionVue to \$250 instead of</p> <p>12 50. Otherwise there's really no difference.</p> <p>13 Q What parameter are you talking about?</p> <p>14 A The value of a -- of a point move on a</p> <p>15 contract.</p> <p>16 Q Okay. And just to be clear, for these</p> <p>17 questions generally, when you're responding with some</p> <p>18 things that you "typically did," I just want to be</p> <p>19 clear that the period that we're interested in for the</p> <p>20 purpose of this testimony is the September 2013</p> <p>21 through February 2017 period.</p> <p>22 So when you say what you typically do or</p>
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<p>1 older version, so -- I'm pretty sure the Matrix will</p> <p>2 take you back to a matrix view of positions.</p> <p>3 Q Okay.</p> <p>4 A Price will display the price of the</p> <p>5 underlying -- a graph of the price of the underlying.</p> <p>6 And Volatility will display realized</p> <p>7 volatility, or statistical volatility as it's called,</p> <p>8 of the underlying and implied volatility -- a specific</p> <p>9 point on the applied volatility curve.</p> <p>10 Q Okay. When you say the "underlying," are</p> <p>11 you referring to the S&amp;P 500?</p> <p>12 A Well, in this case, the underlying would be</p> <p>13 the S&amp;P 500 futures contract. And very specifically,</p> <p>14 I can see we're modeling on the minis.</p> <p>15 Q What makes you say that?</p> <p>16 A Well, I see a symbol up there that --</p> <p>17 that -- all the symbols I can see -- well, I'm sorry.</p> <p>18 The only symbol I can see is actually a futures</p> <p>19 contract. So I can't say that for sure, but that was</p> <p>20 my practice -- was to model on a -- the mini contract.</p> <p>21 It had more accurate intraday quotes.</p> <p>22 Q I'm sorry. Just to clarify, do you mean</p>	<p>1 did, you're referring to that period?</p> <p>2 A Well, just -- just to clarify the period,</p> <p>3 we're looking -- no -- into March. So did we extend</p> <p>4 that period?</p> <p>5 Q No. I understand that this represents a</p> <p>6 graph of OptionVue that you sent in March of 2017.</p> <p>7 My questions are for the purposes of</p> <p>8 understanding from you how OptionVue works and the</p> <p>9 different facilities that it had.</p> <p>10 A Okay. I just want to be clear. If we're</p> <p>11 referring to this particular graph -- in March or</p> <p>12 February or what -- what period? Just so there's no</p> <p>13 confusion.</p> <p>14 Q Yes. Thank you for clarifying. My</p> <p>15 questions are about OptionVue generally, not about</p> <p>16 this specific graph. We're just using this graph as a</p> <p>17 sample of what OptionVue would show.</p> <p>18 A Okay. Great.</p> <p>19 Q Okay. Moving slightly to the right, there's</p> <p>20 a group of icons that say "Info," "Trade Log,"</p> <p>21 "Status," "Reports" respectively. Can you explain</p> <p>22 what those do?</p>



<p style="text-align: right;">Page 142</p> <p>1 A Sure. So the Info would display certain</p> <p>2 parameters.</p> <p>3 I'm trying to think of an example. It would</p> <p>4 display parameters about whether you wanted the model</p> <p>5 to include commissions; whether you wanted to have a</p> <p>6 slippage calculation in there; some information about</p> <p>7 your account, which I generally didn't use.</p> <p>8 I didn't use the software to track, you</p> <p>9 know, P&amp;L on -- on the fund. But that's -- I -- I</p> <p>10 think that's in there.</p> <p>11 To be honest, normally I would click on it</p> <p>12 to tell you what's in there. I don't think about it</p> <p>13 real hard.</p> <p>14 The Trade Log is the -- the record of trades</p> <p>15 that are performed. And once again, it's not an</p> <p>16 accurate -- at least not in the way I used it -- it's</p> <p>17 not an accurate record of specific trades.</p> <p>18 In other words, I might go in and add a</p> <p>19 prospective trade and -- and so it would hit the trade</p> <p>20 log, and then later maybe I would remove it.</p> <p>21 But that's what the Trade Log does. It</p> <p>22 shows what transactions were recorded that get you to</p>	<p style="text-align: right;">Page 144</p> <p>1 trade;" right?</p> <p>2 A That's correct. It may have been very</p> <p>3 different from the time it was actually executed.</p> <p>4 Q Understood. Okay. What does "Step through</p> <p>5 dates" mean, on the upper left?</p> <p>6 A That means that the -- the software has two</p> <p>7 ways in which it can display these lines.</p> <p>8 It can display -- and it's set right now</p> <p>9 through dates, so you see a box in the lower left</p> <p>10 corner. The box says "T+0," "T+5," "T+9," "T+14," and</p> <p>11 that means the first dotted line is displaying today.</p> <p>12 The next dotted line is displaying five days in the</p> <p>13 future, then nine days in the future, and then the</p> <p>14 last line is typically the expiration period that is</p> <p>15 selected -- the solid line. So that's an expiration,</p> <p>16 which in this case happens to be 14 days in the</p> <p>17 future. So that's in the "Step through dates" mode.</p> <p>18 If you click "Step through volatilities,"</p> <p>19 you'll simply display a particular date and it will</p> <p>20 vary applied volatility assumptions in increments that</p> <p>21 you can specify as well.</p> <p>22 Q Okay. So if you click "Step through</p>
<p style="text-align: right;">Page 143</p> <p>1 that red box of positions.</p> <p>2 Q In the trade log, how did the software know</p> <p>3 what the price of the option was?</p> <p>4 A At whatever point in time -- in other words,</p> <p>5 so in the trade log, I enter a trade. And I can model</p> <p>6 the trade just having it sit there. It wouldn't</p> <p>7 actually be in the trade log yet. It would simply be</p> <p>8 in the -- in a window in the model.</p> <p>9 And I could -- I could model it. It would</p> <p>10 still show up in that red box, but I would have to</p> <p>11 choose to model a trade rather than an existing</p> <p>12 position.</p> <p>13 If I convert the trade, then it goes into</p> <p>14 the trade log as an executed trade. And whatever</p> <p>15 the -- the price of the option at the moment I</p> <p>16 executed the trade is what would go in the trade log</p> <p>17 as the price.</p> <p>18 But again, I didn't use the software to</p> <p>19 accurately track entry and exit trade pricing for the</p> <p>20 Fund.</p> <p>21 Q Okay. When you say the time the trade was</p> <p>22 "executed," you mean the time you clicked "convert</p>	<p style="text-align: right;">Page 145</p> <p>1 volatilities," you would no longer see the different</p> <p>2 lines representing different time frames?</p> <p>3 A Yeah. You wouldn't see different time</p> <p>4 frames. The lines would then represent different</p> <p>5 volatility levels.</p> <p>6 Q Okay. All right. And what about "Max Proj</p> <p>7 Date"?</p> <p>8 A Yeah. That means the maximum projection</p> <p>9 date. So you can select -- and it -- it would</p> <p>10 normally -- well, it's normally set to whatever</p> <p>11 expirations you have built into the -- into the matrix</p> <p>12 portion of the model.</p> <p>13 So it would normally give you the</p> <p>14 opportunity to select -- do I want the nearest</p> <p>15 expiration, do I want the second-nearest expiration,</p> <p>16 do I want five expirations out. Or you can go in and</p> <p>17 manually enter a particular date in the future. So</p> <p>18 that's -- that's the date, essentially, of that solid</p> <p>19 line -- the furthest out it's going to look in time.</p> <p>20 Q Okay. What's the default setting for max</p> <p>21 projection date?</p> <p>22 A I'm trying to think. You know, I'm not sure</p>

<p style="text-align: right;">Page 146</p> <p>1 what the actual default is. Typically, the drop-down</p> <p>2 includes all the active expirations. I don't,</p> <p>3 honestly, remember if it automatically pops up at the</p> <p>4 nearest, the furthest, somewhere in between.</p> <p>5 But basically, the projection dates will be</p> <p>6 your active expirations. And you can choose between</p> <p>7 them or you can manually enter them.</p> <p>8 Q And to be clear, when you say "active</p> <p>9 expirations," you mean the expirations of the</p> <p>10 positions that are listed in the box above the graph;</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. Moving down the left-hand side.</p> <p>14 There's a field that is labeled "Volty Chg." What is</p> <p>15 that?</p> <p>16 A That's volatility change, which allows you</p> <p>17 to enter in an assumption about whether volatility is</p> <p>18 going to rise or fall, and by how much.</p> <p>19 Q Okay. What are the different options for</p> <p>20 that field?</p> <p>21 A You can put in anything you want. You can</p> <p>22 put in +40, +.5, anything you want about volatility</p>	<p style="text-align: right;">Page 148</p> <p>1 Q Okay. And in this case, the underlying is</p> <p>2 the S&amp;P futures.</p> <p>3 A Yes.</p> <p>4 Q Okay. And the Y-axis of the graph always</p> <p>5 reflects some measurement of the value of the</p> <p>6 positions that are in the box above; right?</p> <p>7 A Yeah. The -- the -- you can generally</p> <p>8 choose between profit and loss or just absolute value.</p> <p>9 Q Okay. So either the absolute value of those</p> <p>10 positions, or how much those positions have gained or</p> <p>11 lost relative to the executed price recorded; right?</p> <p>12 A Correct.</p> <p>13 Q Okay. So if you change volatility from zero</p> <p>14 percent to 5 percent, those axes themselves don't</p> <p>15 change; right?</p> <p>16 A Again, I don't -- I don't think so. I -- I</p> <p>17 don't pay a lot of attention.</p> <p>18 It's more a matter of looking at them, and</p> <p>19 if they're not the way I like, I can adjust them. So</p> <p>20 I -- I guess I don't pay close attention to whether</p> <p>21 something automatically changes them.</p> <p>22 Q Okay. Excuse me one sec.</p>
<p style="text-align: right;">Page 147</p> <p>1 assumptions.</p> <p>2 Q Okay. And if you put in +5, for example,</p> <p>3 how would that graph be different than if that field</p> <p>4 were zero?</p> <p>5 A Well, the -- the -- zero assumes that</p> <p>6 current volatility conditions don't change.</p> <p>7 If you put in a +5, then you are telling the</p> <p>8 model you want to see what happens if implied</p> <p>9 volatility increases by 5 percent.</p> <p>10 Q Okay. Do the axes of the graph change if</p> <p>11 you do that?</p> <p>12 A I don't believe that they do. The axes of</p> <p>13 the graphs are -- I mean, you can -- you can go and</p> <p>14 change what the graph looks like manually. I don't</p> <p>15 recall if they automatically change by doing that.</p> <p>16 Q As far as you know, the X-axis of the graph</p> <p>17 is always an S&amp;P level; right?</p> <p>18 A It's -- it's going to be the futures level.</p> <p>19 Right.</p> <p>20 Q I'm sorry. That's the level of the S&amp;P</p> <p>21 futures?</p> <p>22 A Of the underlying. Yeah.</p>	<p style="text-align: right;">Page 149</p> <p>1 Okay. Underneath that field there's a field</p> <p>2 labeled "Amount Provided." What does that mean?</p> <p>3 A It's not something I use. I -- I don't</p> <p>4 really know.</p> <p>5 Q Do you know what the field populated</p> <p>6 Original Requirement appears to refer to?</p> <p>7 A No, I don't.</p> <p>8 Q Or "Orig." -- I'm sorry, just for the</p> <p>9 record.</p> <p>10 A Yeah. It's just -- it's not something I</p> <p>11 use.</p> <p>12 Q The "Orig. Reqmt." field is not something</p> <p>13 you use?</p> <p>14 A Right.</p> <p>15 Q Okay. Do you know where the number beneath</p> <p>16 that box comes from?</p> <p>17 A No. Again, I don't use it. So I'm not</p> <p>18 sure.</p> <p>19 Q Okay. You never changed that or altered</p> <p>20 that in any way?</p> <p>21 A No. Like I said, I don't use it.</p> <p>22 Q Okay. And below that there's a field</p>

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<p>1 labeled "Vertical Axis."</p> <p>2 A Right.</p> <p>3 Q I believe you testified a moment ago that</p> <p>4 the options for that are Profit/Loss or Value. Is</p> <p>5 that right?</p> <p>6 A Yes.</p> <p>7 Q Okay. Are there any other options under</p> <p>8 there?</p> <p>9 A I don't -- I don't recall that there are.</p> <p>10 No. I think those are the only two there. Those are</p> <p>11 the only two I've ever used, and I actually don't use</p> <p>12 Profit/Loss very much.</p> <p>13 Q Okay. But you appear to have done so, here,</p> <p>14 in March of 2017; right?</p> <p>15 A Well, the reason for that is that the Value</p> <p>16 doesn't work well when you have futures contracts in</p> <p>17 the equation, which we had at this time.</p> <p>18 Q Okay. Oh, I understand. Okay.</p> <p>19 And why is that?</p> <p>20 A Well, the value of an option can be</p> <p>21 computed. The value of a futures contract -- you can</p> <p>22 put emotional value to it, but that's not what the</p>	<p>1 Q What about the "Target" button below that?</p> <p>2 A Again, I don't use that. I -- that's an</p> <p>3 analytical tool for managing trades with profit</p> <p>4 targets, I think. But I don't really use it.</p> <p>5 Q Okay. What about the button next to it</p> <p>6 that's labelled "Curr Bell"?</p> <p>7 A Yeah. Again, I -- I don't use that. I</p> <p>8 think it refers to some kind of bell curve</p> <p>9 distribution.</p> <p>10 Q Okay. Do you know what the numbers in the</p> <p>11 box under that "Curr Bell" button represent?</p> <p>12 A No. No, I don't -- don't use it.</p> <p>13 Q What does "Show BEs" mean?</p> <p>14 A I think they show break-evens. And again,</p> <p>15 just not a tool that I use in the software.</p> <p>16 Q Okay. What would a break-even mean?</p> <p>17 A If you put a trade on and use the P&amp;L and</p> <p>18 accurately enter the entry to the trade, it can show</p> <p>19 you a break-even on a particular position and what</p> <p>20 price where, you know, a position breaks in -- breaks</p> <p>21 even at.</p> <p>22 You know, all the underlying assumptions:</p>
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<p>1 software does.</p> <p>2 So it's -- it's computing a P&amp;L from an</p> <p>3 entry point on the futures contract, so it's a little</p> <p>4 bit apples -- apples to oranges. If you use a value,</p> <p>5 it just doesn't make a graph -- the model doesn't work</p> <p>6 correctly when you have futures in there.</p> <p>7 And outside of this period of time, I don't</p> <p>8 often, if at all, have futures in -- in this -- in the</p> <p>9 Fund. We didn't have futures until this point, so.</p> <p>10 Q Understood. Below that there is a field</p> <p>11 labeled "Horizontal Axis." Can you explain what that</p> <p>12 is?</p> <p>13 A So those are levers. That's one way to</p> <p>14 adjust the scale of the horizontal axis, meaning, you</p> <p>15 know -- there's -- there's an easier way to do it just</p> <p>16 by right-clicking, dropping and dragging, and stuff</p> <p>17 like that.</p> <p>18 But if you hit the plus button, it makes --</p> <p>19 it basically zooms in on the graph by adjusting the X-</p> <p>20 axis. If you hit the minus button it zooms out. Left</p> <p>21 and right moves the -- the center point of the graph</p> <p>22 left or right.</p>	<p>1 what's the time frame, what's the volatility, et</p> <p>2 cetera, I think.</p> <p>3 But like I said, I don't really use it.</p> <p>4 Q Okay. And you don't use it specifically</p> <p>5 because the execution prices of the trades in the box</p> <p>6 above weren't necessarily the prices at which you had</p> <p>7 bought or sold the options; right?</p> <p>8 A Well, that's -- that's why I don't use P&amp;L</p> <p>9 on some of the other functionalities.</p> <p>10 But in this case, it's just not something</p> <p>11 that was meaningful to my process and -- and my</p> <p>12 analytics.</p> <p>13 Q Got it. What about the field below that</p> <p>14 that says "Show Obj, Stp"?</p> <p>15 A Yeah. That one, I have no idea.</p> <p>16 You know, again, I can -- I can only guess,</p> <p>17 from the abbreviation, it's something related to a --</p> <p>18 well, I'll stop.</p> <p>19 But again, don't use it. So I -- I really</p> <p>20 don't know what that one does.</p> <p>21 Q Okay. I'm sorry, you said you would get</p> <p>22 something related to a stop? Is that what you said?</p>

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<p>1 A Well, I -- again, I shouldn't guess. So</p> <p>2 I'll stop. I don't know what it means.</p> <p>3 Q Okay. That's fine.</p> <p>4 And below that there's a field that says</p> <p>5 "Wand." What's that?</p> <p>6 A That's just the current -- the "Wand" refers</p> <p>7 to that green box in the vertical green line in --</p> <p>8 that, right, now is, you know, in -- and that's the</p> <p>9 default. It sort of hits wherever the price of the</p> <p>10 underlying is -- that's where it's going to place it.</p> <p>11 But you can put your cursor on that green</p> <p>12 box and move it right or left if you want to see the</p> <p>13 stuff displayed below at a particular price. And that</p> <p>14 box will tell you exactly where your Wand is.</p> <p>15 You can kind of see it on the graph,</p> <p>16 obviously, but that one will tell you where that Wand</p> <p>17 position actually is.</p> <p>18 Q Sorry. Which box will tell you where the</p> <p>19 Wand position actually is?</p> <p>20 A The -- the box you asked about. The "Wand"</p> <p>21 box. The "Wand" --</p> <p>22 Q Oh, I see. The one that says "2380.75."</p>	<p>1 A Yes.</p> <p>2 Q Sorry. Let me rephrase the question.</p> <p>3 Was it your practice to have an accurate</p> <p>4 list of the Fund's positions in the box above the</p> <p>5 graph?</p> <p>6 A Yes.</p> <p>7 Q So why wouldn't those percentages on the</p> <p>8 right-hand side be relevant to you?</p> <p>9 A Because although the positions were</p> <p>10 accurate, I -- I didn't spend the time or effort to</p> <p>11 put in entry and exit prices for those positions.</p> <p>12 Q I understand. Okay. And that's also why</p> <p>13 you used the Value field as opposed to Profit and</p> <p>14 Loss?</p> <p>15 A Correct.</p> <p>16 Q So given that it wasn't your practice to</p> <p>17 ensure that the positions reflected in the box above</p> <p>18 the graph had accurate entry prices, the break-even</p> <p>19 function was also not meaningful to you; right?</p> <p>20 A As I understand. But like I said, I've</p> <p>21 never even investigated what that does because it</p> <p>22 wasn't meaningful for my -- my strategy.</p>
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<p>1 A Yeah. That means that green box that you're</p> <p>2 looking at, in this frozen snapshot, is sitting</p> <p>3 exactly at 2380.75. Like I said, you can look at it</p> <p>4 and tell, but that tells you very precisely, according</p> <p>5 to the software.</p> <p>6 Q Okay. The right-hand side of the graph that</p> <p>7 lists percentages, what do those represent?</p> <p>8 A Again, that's one of the things that, you</p> <p>9 know -- it's set on profit and loss right now. So</p> <p>10 once again, it's not very meaningful. But it's</p> <p>11 designed to, you know.</p> <p>12 If you were -- if you had an accurate</p> <p>13 carefully-managed, in terms of entry pricing and</p> <p>14 positions -- your portfolio -- and if you had an</p> <p>15 accurate account balance -- which is another thing</p> <p>16 that isn't meaningful to how I use the software --</p> <p>17 meaning if you said, "I'm starting a half-million</p> <p>18 dollar account," and the model said you made \$100,000,</p> <p>19 it would say +20 percent. But again, that's not a</p> <p>20 functionality I use.</p> <p>21 Q Was it your practice to have an accurate</p> <p>22 list of positions in the box above the graph?</p>	<p>1 Q Okay. And, Mr. Walczak, what would the</p> <p>2 purple and blue bars underneath the X-axis represent?</p> <p>3 A So they represent a bell curve distribution</p> <p>4 based on recent historical volatility of expected</p> <p>5 price movement.</p> <p>6 Q Okay. Let's start with the purple one.</p> <p>7 What, specifically, does the purple one mean in that</p> <p>8 context?</p> <p>9 A The purple one is a plus or minus one</p> <p>10 standard deviation move based on -- on recent</p> <p>11 historical volatility of the underlying.</p> <p>12 Q Okay. How do you know that?</p> <p>13 A That's the functionality of the software.</p> <p>14 Q Okay. But how did you learn that? How did</p> <p>15 you learn that that's what that purple bar represents?</p> <p>16 A Well, when I -- we had to use the software</p> <p>17 many years ago -- either through their help -- help</p> <p>18 function or definitions that the software company</p> <p>19 provides. That's where I learned it was.</p> <p>20 Q Okay. All right. And what about the</p> <p>21 blueish bar below that?</p> <p>22 A That's plus or minus two standard</p>

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<p>1 deviations.</p> <p>2 Q Okay. So specifically, the S&amp;P futures</p> <p>3 price range. It would be plus or minus two standard</p> <p>4 deviations from the current price?</p> <p>5 A That's what the bars -- that's what that</p> <p>6 teal bar represents. Yes.</p> <p>7 Q I would go further with a line of</p> <p>8 questioning about whether it's teal or blue or</p> <p>9 something else, but we can have a mutual understanding</p> <p>10 about what it is, I think.</p> <p>11 Okay. If you can actually give me one</p> <p>12 moment.</p> <p>13 Okay. Mr. Walczak, last questions on just</p> <p>14 the basic functionality of OptionVue, here.</p> <p>15 Can you describe the numbers in the table</p> <p>16 below that purple and blue bar?</p> <p>17 A So basically, they're the option -- the</p> <p>18 aggregate options Greeks of the positions reflected in</p> <p>19 that -- the top box.</p> <p>20 Q Okay. If the Profit/Loss field were changed</p> <p>21 from -- I'm sorry.</p> <p>22 If the vertical axis field were changed from</p>	<p>1 (Exhibit 29 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. WASSERMAN:</p> <p>4 Q Okay. You should see 29 up there now. If</p> <p>5 you could pull it up. Could you take a minute to</p> <p>6 review that document, Mr. Walczak.</p> <p>7 And specifically, the vertical axis field</p> <p>8 and the data in the box on the bottom of the first</p> <p>9 page.</p> <p>10 Mr. Walczak, does this appear to be an</p> <p>11 OptionVue graph where the vertical axis is populated</p> <p>12 with Value as opposed to Profit/Loss?</p> <p>13 A Yes.</p> <p>14 Q Does this look familiar to you?</p> <p>15 A Yes.</p> <p>16 Q So to the best of your recollection, does</p> <p>17 the box at the bottom of the OptionVue screen at least</p> <p>18 change from the top row being P&amp;L to the top row being</p> <p>19 Value; right?</p> <p>20 A I'm not -- I didn't get that, exactly.</p> <p>21 What -- what did you ask?</p> <p>22 Q I'm comparing Exhibit 29 to Exhibit 27. And</p>
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<p>1 Profit/Loss to Value, would the fields in that box</p> <p>2 change?</p> <p>3 A I don't think so. I've -- I've never</p> <p>4 actually -- I don't recall paying attention to that.</p> <p>5 But I don't think so.</p> <p>6 Q When you say you don't "recall paying</p> <p>7 attention that that," what's "that"?</p> <p>8 A To whether or not those -- those values</p> <p>9 changed if I toggle back and forth between P&amp;L and</p> <p>10 Value. I don't -- I don't think so.</p> <p>11 Q Okay. I'm going to mark one additional</p> <p>12 exhibit. Give me a moment.</p> <p>13 MR. WASSERMAN: What number are we on,</p> <p>14 here? So Exhibit 28 is going to be SEC_04_0100384.</p> <p>15 MR. KOPECKY: I'm sorry, Sam, I'm</p> <p>16 confused. Did you -- there's Exhibit 28 already up</p> <p>17 there. Are you marking another exhibit? Twenty-nine?</p> <p>18 MR. WASSERMAN: Oh. I'm sorry. Yes.</p> <p>19 This is going to be -- yes. I'm sorry. This is going</p> <p>20 to be 29. My mistake.</p> <p>21 MR. KOPECKY: No worries.</p> <p>22 //</p>	<p>1 specifically, what the first row of that box, below</p> <p>2 the graph, shows.</p> <p>3 A Okay. Yeah. So the first row -- yeah. I</p> <p>4 don't think those -- earlier, I thought you were</p> <p>5 asking me if the values change when I toggled, which I</p> <p>6 don't know.</p> <p>7 Definitely, the attributes -- in other</p> <p>8 words, they -- they don't change. It's Value, Delta,</p> <p>9 Gamma, Theta, Vega. I don't think those things</p> <p>10 change. Anyway, yeah.</p> <p>11 Q Understood. But the first line, the first</p> <p>12 row of data changes; right?</p> <p>13 A Yes. It's Value now. Yeah.</p> <p>14 Q Okay. Right. In 29 the first row of data</p> <p>15 is Value, whereas in 27 the first row of data was P&amp;L;</p> <p>16 right?</p> <p>17 A Yeah. Yep.</p> <p>18 Q So when you used OptionVue, you said it was</p> <p>19 your practice to use the Value field and not the P&amp;L</p> <p>20 field; is that right?</p> <p>21 A Correct.</p> <p>22 Q Okay. So looking at Exhibit 29, what does</p>

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<p>1 that first row of data that's labeled "Value" show</p> <p>2 you?</p> <p>3 A It shows me the net value, at whenever this</p> <p>4 snapshot was taken and however the settings were done,</p> <p>5 in terms of valuing the individual legs of the</p> <p>6 position. It shows that value of this particular</p> <p>7 position.</p> <p>8 Q The position that's listed in the box above</p> <p>9 the graph; right?</p> <p>10 A Correct.</p> <p>11 Q Okay. And there's not just one number in</p> <p>12 that value row of data; right? It's a series of</p> <p>13 numbers; right?</p> <p>14 A Yes.</p> <p>15 Q What does that series of numbers represent?</p> <p>16 In other words, why are each of those numbers</p> <p>17 different?</p> <p>18 A They represent the value of the position at,</p> <p>19 you know -- as you move from left to right you're</p> <p>20 changing the price of the underlying.</p> <p>21 So whatever the X-axis shows, and you drop</p> <p>22 down below it and it gives you the value at that price</p>	<p>1 A Yes.</p> <p>2 Q And sorry if I asked this already, but how</p> <p>3 did you typically use the max projection date field?</p> <p>4 What did you typically select?</p> <p>5 A I would start with the furthest out</p> <p>6 expiration that we had positions in.</p> <p>7 Q Okay. Was it your practice to only run the</p> <p>8 graph for that scenario? I'm sorry.</p> <p>9 Was it your practice to only use that max</p> <p>10 projection date?</p> <p>11 A No. I -- I would use, you know -- again,</p> <p>12 depending on the portfolio composition, depending on</p> <p>13 the market conditions, I would use that projection.</p> <p>14 I would isolate particular expiration</p> <p>15 periods; in other words, compartmentalize only those</p> <p>16 positions. I would vary volatility. I would test</p> <p>17 different -- the -- the software contains at least</p> <p>18 three, I think now maybe four or five different</p> <p>19 volatility models, some of which are more appropriate</p> <p>20 to calls, some of which are more appropriate to puts.</p> <p>21 So I had almost as many combinations and</p> <p>22 permutations of options that there are -- I had the</p>
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<p>1 for whatever time frame you've selected. That's the</p> <p>2 other selection that has to be made.</p> <p>3 Q Right. The different graphs representing</p> <p>4 different time frames.</p> <p>5 A The -- the --</p> <p>6 Q I'm sorry. The different lines of the graph</p> <p>7 representing different time frames.</p> <p>8 A Yes.</p> <p>9 Q Okay. So the graph generally shows you how</p> <p>10 your positions change in value, depending on the level</p> <p>11 of the underlying asset; right?</p> <p>12 A Yeah. For -- for -- again, that's a, you</p> <p>13 know -- you have to select a whole lot of things to</p> <p>14 make that realistic. And you have to know how you're</p> <p>15 using the tool. But that is generally correct.</p> <p>16 Q Understood. Given the settings that you</p> <p>17 select on the left-hand side, the graph represents how</p> <p>18 the positions change in value, given movement in the</p> <p>19 underlying asset.</p> <p>20 A Yes.</p> <p>21 Q And that's the case for any OptionVue graph;</p> <p>22 right? Not just the one we're looking at; right?</p>	<p>1 same number of combinations and permutations of</p> <p>2 modeling expiration period -- and how I would use the</p> <p>3 tool.</p> <p>4 So my practice was to use whatever's</p> <p>5 appropriate at the time. And there was a lot of</p> <p>6 choices.</p> <p>7 Q Okay. Were there times when you would input</p> <p>8 the entire portfolio into the box at the top of the</p> <p>9 graph?</p> <p>10 A Yes.</p> <p>11 Q Okay. How would you do that?</p> <p>12 A Well -- well, typically, the software always</p> <p>13 contained the entire portfolio.</p> <p>14 In other words, what -- what would happen</p> <p>15 is, you know, from a particular starting point -- and</p> <p>16 what we tried to do is -- is double-check on a very</p> <p>17 frequent basis. I can't say every single day, but</p> <p>18 usually we didn't go very far without triple-checking</p> <p>19 the portfolio.</p> <p>20 Meaning if -- if I did a trade, I'd enter</p> <p>21 the trade. I didn't take the time to put accurate</p> <p>22 prices in there, but I was -- I was very careful about</p>



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<p>1 the positions.</p> <p>2 And then, periodically, I would have whoever</p> <p>3 was the analyst at the time -- at some point it was --</p> <p>4 it was even Kimberly. Then it was either Daniel or</p> <p>5 Augie or whatever the time frame was -- would -- would</p> <p>6 double-check against brokerage statements or -- or</p> <p>7 general Gemini Fund Accounting statements to make sure</p> <p>8 that the software contained the accurate positions for</p> <p>9 the fund portfolio.</p> <p>10 Q Okay. And was that list of fund positions</p> <p>11 saved? If you were to log out of OptionVue, for</p> <p>12 example?</p> <p>13 A Yes.</p> <p>14 Q Okay. And, then, when you logged back in</p> <p>15 later, you'd be able to see that same list of</p> <p>16 positions?</p> <p>17 A Yes.</p> <p>18 Q Does that saved list of positions have a</p> <p>19 name?</p> <p>20 A I don't know. I'd say somewhere -- it's an</p> <p>21 automatic system within the software. So somewhere in</p> <p>22 the OptionVue files, you know, like any piece of</p>	<p>1 that?</p> <p>2 A Yes.</p> <p>3 Q And just to point your attention to the end</p> <p>4 of the first paragraph, she says "I've attached</p> <p>5 another screen shot including yesterday's positions."</p> <p>6 A Yes.</p> <p>7 Q Then, can you pull up the attachment,</p> <p>8 Exhibit 31, please.</p> <p>9 And it's another one where you might have to</p> <p>10 rotate it to get it to appear properly. And you can</p> <p>11 also zoom in if it's too small.</p> <p>12 A It's not too small. It's a little blurry,</p> <p>13 but I think I can read it.</p> <p>14 Q Does this appear to be the screen you were</p> <p>15 referring to where you would enter positions --</p> <p>16 A Yes.</p> <p>17 Q -- in OptionVue?</p> <p>18 A Yes.</p> <p>19 Q Do you see, towards the top of the screen,</p> <p>20 there appear to be tabs labeled "Asset Specific" and</p> <p>21 "All Trades Super- HFXAX," respectively?</p> <p>22 A Yes.</p>
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<p>1 software there's -- there's execution files. There's</p> <p>2 all kinds of stuff. I'm not a real techie, but it --</p> <p>3 it saves data files that do that. It has an autosave</p> <p>4 function.</p> <p>5 Everyone once and a while I would -- it's</p> <p>6 almost like saving a Word document or an Excel</p> <p>7 document. You want to be double sure, so you hit the</p> <p>8 Save button manually. But it's designed, when you go</p> <p>9 through a shutdown, to save what you have. And -- and</p> <p>10 it -- it generally did that pretty well.</p> <p>11 Q Okay. I'm going to mark another e-mail and</p> <p>12 attachment as Exhibits 30 and 31. One second.</p> <p>13 (Exhibits 30 and 31 were marked for</p> <p>14 identification.)</p> <p>15 Q Exhibit 30 is Bates stamped CFTC3_00023254.</p> <p>16 And it's attachment, which has been marked Exhibit 31,</p> <p>17 is Bates stamped CFTC3_00023255.</p> <p>18 Mr. Walczak, can you see those two exhibits?</p> <p>19 A I have them. And I've just opened up 30.</p> <p>20 Okay.</p> <p>21 Q Okay. Thirty appears to be an e-mail from</p> <p>22 Kimberly to yourself on May 29th of 2015. Do you see</p>	<p>1 Q What are those tabs?</p> <p>2 A The Asset Specific is -- for example, in</p> <p>3 this case, would be the S&amp;P futures. In other words,</p> <p>4 you could have an account that had crude oil futures</p> <p>5 or soybean futures or something. So these would be</p> <p>6 buttons that refer only to that active asset class</p> <p>7 of -- of -- in this case, futures -- I mean the S or</p> <p>8 SPX futures.</p> <p>9 The All Trades Super normally had -- I can</p> <p>10 see it in OptionVue -- a super account is what's known</p> <p>11 as -- it's not an account you can enter trades in.</p> <p>12 It's an account that aggregates other</p> <p>13 accounts into a single account. And -- and in that</p> <p>14 case, so then you have the buttons that I talked about</p> <p>15 earlier: Info, Trade Log, Status, and Reports.</p> <p>16 Q Yes. So, I'm sorry. When you say that All</p> <p>17 Trades Super aggregates different accounts, what kind</p> <p>18 of accounts are you referring to?</p> <p>19 A So for analytical purposes -- and this looks</p> <p>20 like something Kimberly did 'cause I don't remember</p> <p>21 settings like this.</p> <p>22 But we would subdivide the portfolio and</p>

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<p>1 look separately at calls and puts, for example.</p> <p>2 And -- and one common way to do that is set up an</p> <p>3 account that only had the Fund's put positions in it,</p> <p>4 and another account that had only the Fund's call</p> <p>5 positions in it.</p> <p>6 And then you could set up a super account</p> <p>7 that would aggregate those two. So if you wanted to</p> <p>8 look at the entire portfolio, you'd go to the super</p> <p>9 account. If you wanted to look at only the call side,</p> <p>10 you'd go to the call account. And likewise, on the</p> <p>11 put side.</p> <p>12 Q Okay. So if you were logging into OptionVue</p> <p>13 at the beginning of the day -- and again, my questions</p> <p>14 here are for the September 2013 to February 2017</p> <p>15 period.</p> <p>16 If you logged into OptionVue at the</p> <p>17 beginning of the day and wanted to see a list of all</p> <p>18 the positions currently in the portfolio of the Fund,</p> <p>19 what would you do?</p> <p>20 A Well, typically I -- you know, that was what</p> <p>21 was in OptionVue.</p> <p>22 So I would log in and, as I mentioned about</p>	<p>1 And -- and we cross-checked frequently.</p> <p>2 But again, it wasn't -- none of this was an</p> <p>3 automatic data transfer. So it all revolved around</p> <p>4 manual entries of positions and cross-checking against</p> <p>5 brokerage statements and Gemini statements.</p> <p>6 Q Okay. Who did the manual entry to keep the</p> <p>7 list of positions current in OptionVue?</p> <p>8 A It could have been any one of -- let's call</p> <p>9 it the three of us that worked in the office.</p> <p>10 Q Okay. So it could have been you?</p> <p>11 A Yes. It could have been me.</p> <p>12 Q It could have been Kimberly?</p> <p>13 A It could have been Kimberly. And -- I'll --</p> <p>14 I'll caveat that to say I didn't enter positions on</p> <p>15 anybody else's machine. But I certainly entered them</p> <p>16 on my own. And, conversely, Kimberly and/or Daniel or</p> <p>17 Augie may have entered positions on my machine to save</p> <p>18 me time.</p> <p>19 Q Okay. So do you know for sure that there</p> <p>20 was an account on your screen that listed all the</p> <p>21 current positions in the fund?</p> <p>22 A Again, I think this is Kimberly's. But I</p>
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<p>1 the save function, if I happened, for example -- and</p> <p>2 if I'm remembering correctly that those are the types</p> <p>3 of accounts we had -- in fact, we had -- sometimes</p> <p>4 we'd split them up even further. But whatever account</p> <p>5 I was in when I logged out would be what would come</p> <p>6 back up.</p> <p>7 And then, let's say the call account came up</p> <p>8 and I said, "Oh, okay. I want to look at the whole</p> <p>9 portfolio." And again, I don't -- I don't recognize</p> <p>10 this name. It doesn't sound like one I would have</p> <p>11 used. I think this is a screenshot from Kimberly's</p> <p>12 machine.</p> <p>13 But whatever -- whatever I'd use to look at</p> <p>14 the overall fund portfolio is -- is the account I</p> <p>15 would select in OptionVue.</p> <p>16 Q Were the accounts that were on your screen</p> <p>17 synched with the accounts that were on Kimberly's</p> <p>18 screen?</p> <p>19 A Not automatically. No.</p> <p>20 Q Well, did you cause them to be synched at</p> <p>21 any point?</p> <p>22 A Well, we -- again, that was our -- our goal.</p>	<p>1 can tell you that, certainly, there was an account or</p> <p>2 a listing of all current positions. Again,</p> <p>3 independent of any entry errors that hopefully would</p> <p>4 be caught pretty rapidly, that certainly all the</p> <p>5 positions in the fund were on my -- whatever machine I</p> <p>6 was using.</p> <p>7 Q Okay. How did they get there?</p> <p>8 A I would enter them. Sometimes Daniel or</p> <p>9 Kimberly would enter them. And, then, ideally,</p> <p>10 somebody other than me would cross-check them.</p> <p>11 Q Okay. But how did the intern or Kimberly</p> <p>12 enter them on your computer?</p> <p>13 A I would go buy a sandwich and tell them to</p> <p>14 enter them while I was gone.</p> <p>15 Q Sounds nice. Okay.</p> <p>16 So just to be clear, what processes, if any,</p> <p>17 were in place at the Hedged Futures Fund to ensure</p> <p>18 that you could see in your OptionVue, on any given</p> <p>19 day, a complete list of the fund's positions?</p> <p>20 A I don't recall a formal process being in</p> <p>21 place. As I said, I -- I entered positions. We had</p> <p>22 very frequent cross-checking, by people other than me,</p>

<p style="text-align: right;">Page 174</p> <p>1 against the accounting records of the fund and against</p> <p>2 brokerage statements.</p> <p>3 I -- I don't recall, at that time, if we had</p> <p>4 a very formal process of that happened every day at</p> <p>5 8:00 a.m. I don't -- I don't recall that it did.</p> <p>6 It was more likely triggered by, you know,</p> <p>7 any concern I had -- an upcoming expiration, or</p> <p>8 something didn't look right. We would double- and</p> <p>9 triple-check that there wasn't an error in the -- in</p> <p>10 the positions.</p> <p>11 Q Okay. And was it your practice, at least</p> <p>12 sometimes, to create an OptionVue graph based on that</p> <p>13 list of fund positions?</p> <p>14 A Yes.</p> <p>15 Q How often would you do that?</p> <p>16 A Every day.</p> <p>17 Q Okay. And what would that graph show you?</p> <p>18 A It would -- it would, again, with the caveat</p> <p>19 that these are only models, it -- it would show me</p> <p>20 various snapshots of what would happen in the</p> <p>21 portfolio dependent on different market scenarios,</p> <p>22 volatility scenarios, different models selected,</p>	<p style="text-align: right;">Page 176</p> <p>1 Q So when you did graph the entire fund</p> <p>2 portfolio, what max projection date did you use?</p> <p>3 A Typically, I would go out as far as the</p> <p>4 portfolio went out. So if -- if the furthest</p> <p>5 expiration was, you know, in this case, May of 2018,</p> <p>6 then it would have May's expiration in that projection</p> <p>7 date. That's -- that's sort of the default.</p> <p>8 But it really was driven by whatever was my</p> <p>9 analytical need at the time. If we had an upcoming</p> <p>10 expiration, I might look solely at those positions. I</p> <p>11 might look at the whole portfolio against that nearby</p> <p>12 expiration date. I might discover a sensitivity that</p> <p>13 was worthy of another look in a particular month, so</p> <p>14 I'd go to that expiration.</p> <p>15 But to open up, it would typically go out as</p> <p>16 far as the portfolio did.</p> <p>17 Q Okay. If the portfolio had a large number</p> <p>18 of positions in an upcoming expiry -- in other words,</p> <p>19 in the nearest expiry -- would you change the max</p> <p>20 projection date to be that expiry?</p> <p>21 A Yeah. That would be reasonable. What I'd</p> <p>22 more likely do is -- is look -- you can go into the</p>
<p style="text-align: right;">Page 175</p> <p>1 different time frames.</p> <p>2 So lots of different "what if" scenarios</p> <p>3 about how the portfolio might behave. Again, with the</p> <p>4 caveat that, you know, option prices are selected in</p> <p>5 an open outcry auction process, and models are models.</p> <p>6 But it would give me an idea.</p> <p>7 Q All right. And to be clear, going back to</p> <p>8 Exhibit 28 for a moment, which shows us a sample</p> <p>9 OpvionVue screen.</p> <p>10 Can you remind me, when you did put in the</p> <p>11 whole portfolio into OptionVue, what was the max</p> <p>12 projection date you used?</p> <p>13 A Let me answer that in a minute. But I'm --</p> <p>14 is 28 what I'm supposed to be looking at? Because</p> <p>15 I've got 27 and I'm skipping to 29. I don't know how</p> <p>16 that happened. What was 28?</p> <p>17 Q I'm sorry, Mr. Walczak. You're right.</p> <p>18 Twenty-seven.</p> <p>19 A Okay. All right. I've got 27. And you</p> <p>20 asked me --</p> <p>21 Q Yes. I'll repeat my question.</p> <p>22 A Sure.</p>	<p style="text-align: right;">Page 177</p> <p>1 system and exclude all but a particular -- in other</p> <p>2 words, you can look at a single expiration period,</p> <p>3 only those positions, excluding all others. You can</p> <p>4 look at two expiration periods excluding all others.</p> <p>5 And you can pick and choose -- so there's a lot of</p> <p>6 flexibility.</p> <p>7 So it wouldn't be unusual for me to pick and</p> <p>8 choose different expiration periods and look at them.</p> <p>9 Q How would you do that? For example, how</p> <p>10 would you choose just to look at the positions that</p> <p>11 were expiring the soonest?</p> <p>12 A Within the software you can click on a</p> <p>13 particular -- and highlight a particular expiration</p> <p>14 period, and then ask it to model those positions.</p> <p>15 Q How would you do that?</p> <p>16 A With the mouse, usually.</p> <p>17 Q Can we look back at Exhibit 31, please?</p> <p>18 A Okay.</p> <p>19 Q Is this the screen on which you would click,</p> <p>20 with the mouse, to do that?</p> <p>21 A Yes.</p> <p>22 Q Okay. What, specifically, would you do?</p>

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<p>1 A Well, you can -- so this one displays one, 2 two, three, four, five different expiration periods. 3 So at the very top you highlight -- you can 4 click anywhere within that -- that top bar. This is a 5 black and white representation, but it's -- it's 6 colored in OptionVue. 7 You can click on the bar and highlight it, 8 and then once you highlight it you can -- you can 9 click the Analyze button which is the first row, up 10 there, on the right. And it will then give you a 11 graph of the positions in that expiration period. 12 Q Okay. Thank you. Okay, let's go back to 13 27. All right. 14 At the times when you created a graph based 15 on the entire fund portfolio, how many lines did you 16 typically use? 17 A That's all -- I mean, the default for the 18 software is five. And it -- it really depended on 19 the, you know -- how compressed the data was. 20 For example, looking at this graph, my knee 21 reaction would be to eliminate one of the lines 22 because it's just not giving me -- the lines are too</p>	<p>1 and see what happens. 2 And similarly, on the upside, I say to 3 myself, "Look, the -- the VIX has been below 10, 4 and -- and it usually drops when the market goes 5 higher," so if I stay at 15 I might drop it down five 6 and see what that does." 7 So -- so really kind of experienced based. 8 No hard and fast rules other than, again, my 9 experience about how volatility behaves. 10 Q Okay. You said "when you're looking at the 11 upside." What are you referring to? 12 A Well, if I'm looking at a market advance, 13 that's going to influence what I believe volatility 14 might do. 15 Q Okay. So just to clarify your answer, when 16 you're looking at a market advance, it's more likely 17 that volatility would be decreasing. 18 So you would be testing lower volatilities 19 in OptionVue? 20 A Correct. 21 Q Would there ever be a scenario where you're 22 looking at hypothetical market advances, and you're</p>
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<p>1 close together. I want to see a little bit more 2 detail. I'd probably eliminate one of these lines. I 3 might expand or contract the graph. 4 But the default is -- is five -- five 5 buckets of time. So whatever the max expiration 6 period is, the software divides that time frame into 7 five periods and gives you five lines. 8 Q Okay. And is the first one always T+0? 9 A Yes. 10 Q So for every graph, there will be at least a 11 T+0 line? 12 A Yes. 13 Q Okay. And what about a volatility change? 14 In the times that you graphed the entire fund 15 portfolio, how did you fill in that field? 16 A Well, it -- it, again -- kind of 17 experientially, judgment-wise, what kind of scenario 18 I'm looking at. 19 So if I'm looking below the market -- if the 20 VIX is at, you know -- if the VIX is at 15 and I say, 21 "Well, I know from experience that the VIX can easily 22 go to 25 or 30," then I might test out those levels</p>	<p>1 testing higher volatility? 2 A Probably not because that's a very, very, 3 very, very -- 100 times very -- rare occurrence. 4 Q Okay. One moment please. Mr. Walczak, 5 again, asking about the times that you would input the 6 entire portfolio -- I'm sorry. 7 Asking about the times when you would graph 8 the entire fund portfolio in OptionVue, what's the 9 range of S&amp;P prices that you would look at on X-axis? 10 A So it depends on market conditions. You 11 know, if volatility is high, you -- you'd look out 12 further. 13 You know, there was -- there was a time when 14 I, you know, I'd look out fixed strike amounts and 15 then realize it was giving me kind of false readings 16 in terms of the likelihood that the market would 17 advance. 18 So these magenta and teal lines are a better 19 guideline. So again, a judgment call, on my part, 20 based on the current market conditions. 21 Q I'm sorry. When you say there was a time 22 you realized that you were getting "false readings" --</p>

<p style="text-align: right;">Page 182</p> <p>1 is that what you said?</p> <p>2 A Yeah. When I originally put metrics in</p> <p>3 place, you know, I looked at the 5 or 10 percent</p> <p>4 excursions. And it also depends on a time frame.</p> <p>5 I mean, you know, a 5 or 10 percent</p> <p>6 excursion is still a reasonable lookout period if</p> <p>7 you're looking at far enough.</p> <p>8 But if you're looking at a two-week</p> <p>9 expiration and a 10 percent move, that doesn't really</p> <p>10 tell you anything because that -- that is extremely</p> <p>11 unlikely to happen. So in -- in that scenario, I</p> <p>12 wouldn't look out as far.</p> <p>13 Q Okay. So in that scenario, how far out</p> <p>14 would you look?</p> <p>15 A Again, you'd have to place me in -- in the</p> <p>16 market scenario and with whatever the portfolio</p> <p>17 construction looked like. I can't really respond in a</p> <p>18 general sense.</p> <p>19 Q Okay. But to my original question, did you</p> <p>20 recall getting false readings when you had a wide</p> <p>21 range of S&amp;P movement on the X-axis?</p> <p>22 A I'm not sure what you mean -- and -- and</p>	<p style="text-align: right;">Page 184</p> <p>1 Q Mr. Walczak, is there anywhere in your</p> <p>2 OptionVue where you could input the funds AUM?</p> <p>3 A I didn't. The -- you -- I could put in --</p> <p>4 there is a place to put in an account size.</p> <p>5 But since the AUM changed day by day, I'd</p> <p>6 have to -- it's much like the pricing. I mean, I</p> <p>7 didn't want to take over for the fund administrator.</p> <p>8 They gave me that information every day -- the AUMs.</p> <p>9 So yeah.</p> <p>10 The short answer is there's a place to put</p> <p>11 it in. I didn't use that functionality for OptionVue.</p> <p>12 Q Okay. Were there -- this might be the same</p> <p>13 question, but just to make sure we're being complete:</p> <p>14 Was there a place to put in the NAV of the fund?</p> <p>15 A The -- the net asset value?</p> <p>16 Q Yes.</p> <p>17 A I -- I guess, kind of -- I'm -- I'm not sure</p> <p>18 of the -- the difference.</p> <p>19 Q Okay. Fair to say that you did not input</p> <p>20 the NAV of the fund into OptionVue?</p> <p>21 A Correct.</p> <p>22 Q "Correct," you did not?</p>
<p style="text-align: right;">Page 183</p> <p>1 maybe it's my bad word -- "false reading." What I</p> <p>2 mean to say is a reading that's not meaningful in</p> <p>3 terms of managing a portfolio.</p> <p>4 In other words, if I'm looking at a scenario</p> <p>5 that the market's going to -- for example, if you say,</p> <p>6 "What happens to the portfolio if the market falls 20</p> <p>7 percent tomorrow?" I would say, "Well, that's kind of</p> <p>8 an interesting thing to look at, but I -- I can't, you</p> <p>9 know -- I can't assign a -- a high probability to that</p> <p>10 happening." So I'm not going to assign high urgency</p> <p>11 to dealing with or evaluating that scenario.</p> <p>12 So -- so that's kind of what I mean by a</p> <p>13 "false" -- you know, if I'm looking at a scenario --</p> <p>14 if someone says to me, "How long will it take you to</p> <p>15 get to the airport if you could fly?" My first answer</p> <p>16 is, "Well, I can't fly." So I'm not really going to</p> <p>17 consider that.</p> <p>18 So this is the same type of scenario.</p> <p>19 I'm -- I'm trying to evaluate realistic scenarios that</p> <p>20 I need to deal with in terms of managing the</p> <p>21 portfolio. And that's a -- a very portfolio- and</p> <p>22 market environment-dependent kind of consideration.</p>	<p style="text-align: right;">Page 185</p> <p>1 A I did not.</p> <p>2 Q Okay. Let's take a five- or ten-minute</p> <p>3 break and go off the record.</p> <p>4 VIDEOGRAPHER: The time is 1:35 p.m.</p> <p>5 This ends Unit No. 4. We're off the record.</p> <p>6 (Off the record.)</p> <p>7 VIDEOGRAPHER: The time is 1:46 p.m.</p> <p>8 This begins Unit No. 5. We're on the record.</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q Mr. Walczak, before the break we were</p> <p>11 talking about the graphs that you would create on</p> <p>12 OptionVue that reflected the entire fund portfolio;</p> <p>13 right?</p> <p>14 Sorry. Mr. Walczak, are you there?</p> <p>15 A Yes. I'm there. Do -- are you asking me to</p> <p>16 characterize the last part of our conversation?</p> <p>17 Q No. I'm not. I want to continue on that</p> <p>18 subject for a moment -- of the graphs that you would</p> <p>19 create in OptionVue based on the entire fund</p> <p>20 portfolio.</p> <p>21 You would call these graphs "stress tests"</p> <p>22 of the fund; right?</p>



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<p>1 A No. That's -- I didn't really call the</p> <p>2 graphs that. These are -- the models are used to</p> <p>3 perform various stress tests on -- on the fund</p> <p>4 numbers; what might happen under lots and lots of</p> <p>5 different scenarios.</p> <p>6 Q I'm sorry, Mr. Walczak. I'm just -- I think</p> <p>7 I'm asking a basic question.</p> <p>8 When you have referred to "stress tests" in</p> <p>9 the past, you were referring to this type of OptionVue</p> <p>10 graph that you ran on the entire portfolio; right?</p> <p>11 A Well, again, I -- maybe it's a distinction</p> <p>12 without a difference, but I wouldn't ever hand someone</p> <p>13 a piece of paper with this graph on it and say,</p> <p>14 "Here's my stress test."</p> <p>15 I would use the model to determine what</p> <p>16 would happen to the portfolio. I'd pick different</p> <p>17 points. I'd do lots of different stuff, look at</p> <p>18 values, look at all kinds of things, and -- and that</p> <p>19 constituted what I meant by a "stress test." Yes.</p> <p>20 Q Okay. So when you say "stress test," you</p> <p>21 mean looking at how the portfolio's expected to</p> <p>22 perform over a variety of market scenarios; right?</p>	<p>1 particular market scenario, you would, in your head,</p> <p>2 divide that 100 million dollars by the AUM to come up</p> <p>3 with a percentage loss?</p> <p>4 A Yes.</p> <p>5 Q Okay. Are you aware of any records that you</p> <p>6 kept documenting those stress tests in percentage loss</p> <p>7 terms?</p> <p>8 A No.</p> <p>9 Q Okay. I want to introduce Exhibit No. 32.</p> <p>10 (Exhibit 32 was marked for</p> <p>11 identification.)</p> <p>12 Q You should see it coming up in just a</p> <p>13 minute.</p> <p>14 Mr. Walczak, before I ask questions about</p> <p>15 Exhibit 32, are you currently in an arbitration</p> <p>16 against Catalyst Capital Advisors?</p> <p>17 A Yes, I am.</p> <p>18 Q What's the nature of that arbitration?</p> <p>19 A Catalyst neglected to compensate me for the</p> <p>20 last couple months of my service, so I'm asking to be</p> <p>21 made whole.</p> <p>22 Q Okay. You filed a claim against them in</p>
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<p>1 A Yes.</p> <p>2 Q Okay. And that's what the OptionVue graph</p> <p>3 shows you; right?</p> <p>4 A Yes. That's true.</p> <p>5 Q Okay. So you ran stress tests in OptionVue</p> <p>6 on the whole portfolio; right?</p> <p>7 A Yes.</p> <p>8 Q Okay. And before the break you testified</p> <p>9 that you did not put in the AUM or NAV of the</p> <p>10 portfolio into OptionVue; right?</p> <p>11 A Correct.</p> <p>12 Q Okay. So was there a way for you to tell,</p> <p>13 in OptionVue -- I'm sorry.</p> <p>14 When you ran a stress test in OptionVue, was</p> <p>15 there a way for you to tell what the gains and losses</p> <p>16 were showing on a percentage basis?</p> <p>17 A I did that calculation off-line.</p> <p>18 Q How'd you do that?</p> <p>19 A In my head, usually.</p> <p>20 Q Okay. So for example, if part of the</p> <p>21 OptionVue graph showed you that the portfolio was</p> <p>22 expected to lose 100 million dollars under a</p>	<p>1 arbitration seeking to be made whole due to</p> <p>2 compensation they withheld from you?</p> <p>3 A Correct.</p> <p>4 Q Okay. You were deposed in connection with</p> <p>5 that arbitration; right?</p> <p>6 A Yes.</p> <p>7 Q Okay. Exhibit 32, I've introduced, is the</p> <p>8 transcript of that deposition, which the transcript</p> <p>9 indicates was Friday, March 19, 2021. Does that sound</p> <p>10 right?</p> <p>11 A Sure. Sounds about right.</p> <p>12 Q Okay. Can I turn your attention to page</p> <p>13 130.</p> <p>14 A Yikes. So at the top --</p> <p>15 Q Are you --</p> <p>16 A -- of the exhibit, it says one of ninety-</p> <p>17 nine, so --</p> <p>18 Q Yes. Not the 130th page of the PDF. But if</p> <p>19 you scroll, down you'll see that the transcript has</p> <p>20 page numbers. There are four pages of transcript per</p> <p>21 page of PDF. Do you see that?</p> <p>22 A Oh. Okay. Yeah. So I'm looking for?</p>



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<p>1 Q Page 130.</p> <p>2 MR. KOPECKY: It's 34 of 99, Ed.</p> <p>3 MR. WASSERMAN: Yes. Thank you, Jim.</p> <p>4 THE WITNESS: Thirty-four? Oh, okay.</p> <p>5 I'm way off. Okay. My page -- okay. So you want</p> <p>6 to -- all right. Got it. 130.</p> <p>7 BY MR. WASSERMAN:</p> <p>8 Q Okay. Do you see, on page 130, starting at</p> <p>9 line 4, the question? I'm going to start at the third</p> <p>10 sentence because it looks like the first two sentences</p> <p>11 are administrative. But correct me if I'm wrong.</p> <p>12 The question says "When you are facing the</p> <p>13 possibility of an 8 percent drawdown, do you look at</p> <p>14 price and volatility across five different time</p> <p>15 frames?" Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And, then, your answer, starting at line 9,</p> <p>18 is "The typical setting in the OptionVue software is</p> <p>19 to display five different time frames." Do you see</p> <p>20 that?</p> <p>21 A Yes.</p> <p>22 Q And then, if you could read through the next</p>	<p>1 correct?</p> <p>2 A I'm not sure I understand. Say that again?</p> <p>3 Q I'll strike the question.</p> <p>4 You didn't think that you were obligated to</p> <p>5 tell investors or investment advisors when one of your</p> <p>6 OptionVue stress tests showed a greater than 8 percent</p> <p>7 drawdown; did you?</p> <p>8 A No.</p> <p>9 Q Okay. And if you chose not to act to remove</p> <p>10 the risk of a great than 8 percent drawdown, you</p> <p>11 didn't think you had an obligation to tell them that</p> <p>12 either; did you?</p> <p>13 A Well, to -- to be clear, there -- there is</p> <p>14 no scenario in which an 8 percent drawdown is not</p> <p>15 possible. You can always find --</p> <p>16 Q But that's not my question, Mr. Walczak.</p> <p>17 A Okay. I'm sorry.</p> <p>18 Q We're talking about your OptionVue stress</p> <p>19 tests.</p> <p>20 A Yes.</p> <p>21 Q And what you saw in your OptionVue stress</p> <p>22 tests. All right?</p>
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<p>1 question and then your answer. Specifically, the</p> <p>2 point of the question that says "if you find that any</p> <p>3 one of the price and volatility stress points that</p> <p>4 you're looking at a major impact of or drawdown of 8</p> <p>5 percent or greater, what do you do?" Do you see that</p> <p>6 question?</p> <p>7 A I do.</p> <p>8 Q And your answer is "Well, again, it's not a</p> <p>9 mechanical system, as I described in the past, I use</p> <p>10 my judgment about the likelihood of that particular</p> <p>11 scenario given the current market positions and decide</p> <p>12 whether to make adjustments and what those adjustments</p> <p>13 should be." So you see your answer there?</p> <p>14 A Yes.</p> <p>15 Q Okay. So Mr. Walczak, even if one of your</p> <p>16 OptionVue stress tests showed a greater than 8 percent</p> <p>17 drawdown, you felt you had the discretion not to</p> <p>18 remove that risk; right?</p> <p>19 A Correct.</p> <p>20 Q Okay. So your risk management process did</p> <p>21 not compel you to take off risk until that graph no</p> <p>22 longer showed a greater than 8 percent drawdown;</p>	<p>1 A Yes.</p> <p>2 Q So the question is: If one of your</p> <p>3 OptionVue stress tests showed a greater than 8 percent</p> <p>4 drawdown, and in your discretion you chose not to act</p> <p>5 to remove that risk, did you have the obligation to</p> <p>6 tell investors and investment advisors that you did</p> <p>7 not do so?</p> <p>8 MR. KOPECKY: Objection; form and</p> <p>9 foundation.</p> <p>10 I mean -- go ahead, Ed.</p> <p>11 A Yeah. So I -- I don't believe I had the</p> <p>12 obligation to inform investors of my day-to-day fund</p> <p>13 management decisions, including my judgment about what</p> <p>14 my stress tests revealed.</p> <p>15 Q Okay. Did you believe that investors and</p> <p>16 investment advisors understood that you had the</p> <p>17 discretion not to remove that risk of a greater than 8</p> <p>18 percent drawdown?</p> <p>19 MR. KOPECKY: Objection; form;</p> <p>20 foundation.</p> <p>21 A I'm sorry. Repeat the question for me.</p> <p>22 Q Would the court reporter please read back</p>

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<p>1 the question.</p> <p>2 VIDEOGRAPHER: One moment.</p> <p>3 (The reporter replayed the record as</p> <p>4 requested.)</p> <p>5 MR. KOPECKY: Same objection.</p> <p>6 Foundation and mischaracterizes his testimony.</p> <p>7 THE WITNESS: To -- to be honest, I</p> <p>8 don't -- I can't speculate on what investors or</p> <p>9 investment advisors understood or didn't understand.</p> <p>10 BY MR. WASSERMAN:</p> <p>11 Q All right. You said in your answer that we</p> <p>12 just looked at from the arbitration deposition that</p> <p>13 you use your "judgment about the likelihood of that</p> <p>14 particular scenario given the current market</p> <p>15 positions."</p> <p>16 According to your risk management</p> <p>17 procedures, what degree of likelihood is necessary for</p> <p>18 you to act?</p> <p>19 A Well, again, until one of the risk metrics</p> <p>20 are actually triggered, then it's entirely up to my</p> <p>21 judgment.</p> <p>22 Q Okay. Sorry. When you refer to "risk</p>	<p>1 some action."</p> <p>2 Q Okay. So no matter what the graphs in</p> <p>3 OptionVue showed, you weren't required to take action</p> <p>4 until one of the risk metrics in the risk guidelines</p> <p>5 matrix that we look at earlier was breached.</p> <p>6 A That's how we operated the Fund. Yes.</p> <p>7 Q I'm sorry, Mr. Walczak. Give me one moment.</p> <p>8 I'm just going to pull up another exhibit for us.</p> <p>9 I've marked as Exhibit 33 a document Bates</p> <p>10 stamped Catalyst_003_00244.</p> <p>11 (Exhibit 33 was marked for</p> <p>12 identification.)</p> <p>13 Q Mr. Walczak, this is an e-mail dated</p> <p>14 February 3rd of 2017. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And specifically, the e-mail appears to be</p> <p>17 from you to Kimberly Rios; correct?</p> <p>18 A Yes.</p> <p>19 Q Can you take a moment to review it, please.</p> <p>20 A Yes.</p> <p>21 Q Okay. Do you recall this from the first</p> <p>22 week of February of 2017?</p>
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<p>1 metrics," what risk metrics are you referring to?</p> <p>2 A Well, we -- we discussed those earlier in</p> <p>3 today's testimony. And as I mentioned, they evolved</p> <p>4 over time; they changed levels, they -- they changed</p> <p>5 composition.</p> <p>6 But we always had a set of objective</p> <p>7 operating parameters. And when one of those was</p> <p>8 triggered, some action was required. And that's where</p> <p>9 my discretion --</p> <p>10 Q So --</p> <p>11 A -- stopped.</p> <p>12 Q I'm sorry, Mr. Walczak. I didn't mean to</p> <p>13 talk over you.</p> <p>14 A So -- so to -- to be clear, I, as any --</p> <p>15 I -- I used, as a portfolio manager, my discretion</p> <p>16 around all aspects of managing the Fund, including</p> <p>17 results of stress tests, whether or not to adjust,</p> <p>18 what was the likelihood, et cetera.</p> <p>19 However, we did have a framework which had</p> <p>20 very objective guidelines that said "if your judgment</p> <p>21 turns out to be incorrect," and sometimes it did,</p> <p>22 "then when these metrics are triggered you must take</p>	<p>1 A Again, I don't specifically. Like I said,</p> <p>2 I'm certain that somewhere in there is when the</p> <p>3 drawdown occurred or began. But I don't remember,</p> <p>4 exactly, the dates.</p> <p>5 Q Okay. The drawdown did not occur during the</p> <p>6 first week of February; right?</p> <p>7 A Okay.</p> <p>8 Q No. I'm asking you to confirm.</p> <p>9 A I just said I don't -- I don't recall</p> <p>10 exactly.</p> <p>11 Q Okay. Hang on one second. I'm going to</p> <p>12 mark, as Exhibit 34, the price history of the fund.</p> <p>13 Just give me one moment.</p> <p>14 (Exhibit 34 was marked for</p> <p>15 identification.)</p> <p>16 Q Are you able to pull up Exhibit 34, Mr.</p> <p>17 Walczak?</p> <p>18 And to be clear, this is not a Bates stamped</p> <p>19 document. This is data that our staff has pulled from</p> <p>20 public sources reflecting the daily price of the</p> <p>21 Hedged Futures Strategy Fund.</p> <p>22 Could you scroll down to February of 2017?</p>

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<p>1 A Okay. Got it.</p> <p>2 Q Looking at the bottom of page 19 of that</p> <p>3 PDF, does that refresh your recollection as to when,</p> <p>4 exactly, the large drawdown in the fund occurred?</p> <p>5 A Yeah. As I'm looking at the prices, it</p> <p>6 looks like the second -- second and third week in</p> <p>7 February. That sounds about right.</p> <p>8 Q Okay. Going back to Exhibit 33.</p> <p>9 A Okay.</p> <p>10 Q So February 3rd was a few days before the</p> <p>11 large drawdown started to occur; right?</p> <p>12 A Yes.</p> <p>13 Q Can you explain the content of this e-mail?</p> <p>14 A Again, it's one of those four-year-old e-</p> <p>15 mails that I don't remember specifically.</p> <p>16 The only clue I have is the -- it doesn't</p> <p>17 sound like my language. And sure enough, there's --</p> <p>18 it looks like a quote I -- I pasted from one of the</p> <p>19 research providers that we used.</p> <p>20 Q I see. Was that research provider</p> <p>21 Sentimentrader?</p> <p>22 A Yeah. That's what it looks like. And</p>	<p>1 conditions.</p> <p>2 Q I'm sorry. Forward returns being what?</p> <p>3 A Lousy, not good, not -- not positive going</p> <p>4 forward.</p> <p>5 Q I see. And the next sentence says "Two</p> <p>6 weeks later, the trade sported only 8 winners out of</p> <p>7 24 occurrences." What does that mean?</p> <p>8 A Yeah. That -- don't know. I -- I mean,</p> <p>9 again, this is a commentary from an outside provider</p> <p>10 from four years ago. I can kind of guess at it.</p> <p>11 He's suggesting that, based on the</p> <p>12 conditions and the non-farm payroll report, that that</p> <p>13 normally didn't turn out well in terms of market</p> <p>14 appreciation.</p> <p>15 But a little bit of a guess, because I don't</p> <p>16 remember this specifically.</p> <p>17 Q Is this commentary something -- I'm sorry.</p> <p>18 Let me rephrase.</p> <p>19 Is this type of commentary something you</p> <p>20 would typically use to evaluate whether or not to</p> <p>21 trade in the Fund?</p> <p>22 A Well, not really to trade as much as -- you</p>
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<p>1 that's likely. Yeah.</p> <p>2 Q Okay. So it looks like you copied and</p> <p>3 pasted a portion of an article or some literature from</p> <p>4 Sentimentrader?</p> <p>5 A Yes.</p> <p>6 Q Okay. Sitting here today, why do you think</p> <p>7 you sent this piece of the article to Kimberly?</p> <p>8 A Well, Kimberly and I were, I mean -- we're</p> <p>9 certainly interested in markets. We used the</p> <p>10 research. You know, I thought she might find it</p> <p>11 interesting.</p> <p>12 Q Okay. Turning your attention, specifically,</p> <p>13 to the fourth paragraph, where it says "We can see</p> <p>14 that buying the equivalent of today's open and holding</p> <p>15 for anywhere between 4 days and a month yielded a</p> <p>16 negative average return and poorly skewed risk/reward</p> <p>17 ratio." Do you see that?</p> <p>18 A Yes.</p> <p>19 Q What does that mean?</p> <p>20 A Well, it looks like he's saying something</p> <p>21 about forward returns being lousy, based on</p> <p>22 whatever -- based on these non-farm payroll</p>	<p>1 know, commentary like this and -- and usually, with</p> <p>2 this guy if I remember correctly, behind this is a</p> <p>3 whole set of statistics.</p> <p>4 So that's certainly another, you know,</p> <p>5 factor I would put into my decision-making process</p> <p>6 around, you know, historical price movement, what's</p> <p>7 volatility been like, what's -- what's the magnitude</p> <p>8 of likely moves. This would be another data point.</p> <p>9 Sure.</p> <p>10 But again, not so much commentary. I don't</p> <p>11 like commentary as much as I like numbers. And</p> <p>12 there's usually numbers behind this guy's stuff.</p> <p>13 Q Okay. What kind of numbers are important to</p> <p>14 you?</p> <p>15 A Data points on market behavior.</p> <p>16 Q Like historical prices and patterns?</p> <p>17 A Yes.</p> <p>18 Q Okay. Why is that stuff important to you?</p> <p>19 A Well, that helps me evaluate the likelihood</p> <p>20 of -- of magnitude of market moves.</p> <p>21 Q Okay. And why is the likelihood of certain</p> <p>22 market moves something that you consider?</p>



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<p>1 A Well, I mentioned that a part of my judgment</p> <p>2 process in managing risk was to determine the</p> <p>3 likelihood of a move. And this is -- this is input to</p> <p>4 that -- that judgment process.</p> <p>5 Q Okay. So can you expand on that a little</p> <p>6 bit? Under what circumstances are you trying to</p> <p>7 determine the likelihood of a certain market move?</p> <p>8 A Well, when I'm doing a stress test I'm</p> <p>9 trying to determine, based on history, based on other</p> <p>10 data points if they're available, whether or not it's</p> <p>11 likely that the market moves, you know, plus or minus</p> <p>12 5 percent, plus or minus 10 percent, plus or minus</p> <p>13 half a percent. These are all factors in trying to</p> <p>14 make that judgment.</p> <p>15 Q Okay. And what level of likelihood of a</p> <p>16 particular market move makes it something that you</p> <p>17 feel you need to act on, in your best judgment?</p> <p>18 A I don't -- I don't have a set number.</p> <p>19 Again, it's a judgment call. I didn't have a</p> <p>20 quantitative or quantifiable matrix. There's simply</p> <p>21 my -- my judgment.</p> <p>22 Q Okay. And if OptionVue were to show you</p>	<p>1 Q How do you consider volatility?</p> <p>2 A Couple different ways. You look at</p> <p>3 volatility levels. Those teal and magenta lines</p> <p>4 in -- in OptionVue are an example, although that's a</p> <p>5 little bit of a false presentation because equity</p> <p>6 market returns are not normally distributed.</p> <p>7 But that's, you know, it gives you a</p> <p>8 starting point. You look at --</p> <p>9 Q The changes in volatility that you're</p> <p>10 mentioning are part of the stress tests that you run</p> <p>11 in OptionVue; right?</p> <p>12 MR. KOPECKY: Sam, I don't think he</p> <p>13 finished his answer to the first question.</p> <p>14 So are you asking a new question? Do</p> <p>15 you not want to hear the answer to the first one?</p> <p>16 Now I'm all confused. Do you want to</p> <p>17 start and ask a new question? You cut him off while</p> <p>18 he was speaking.</p> <p>19 BY MR. WASSERMAN:</p> <p>20 Q Mr. Walczak, you said something you consider</p> <p>21 in deciding whether to reduce risk is volatility.</p> <p>22 A Yes.</p>
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<p>1 that the fund was positioned to lose money in the</p> <p>2 event of a certain market increase, the likelihood of</p> <p>3 that particular market increase would be something</p> <p>4 that you would consider?</p> <p>5 A Yes.</p> <p>6 Q Specifically, the likelihood of that</p> <p>7 particular increase would be something you would</p> <p>8 consider in deciding whether to reduce risk?</p> <p>9 A Correct.</p> <p>10 Q What other factors do you consider in</p> <p>11 deciding whether to reduce risk?</p> <p>12 A Nothing jumps to mind. I mean, that's --</p> <p>13 that's the whole idea is I'm looking, saying, "What</p> <p>14 are the market conditions?"</p> <p>15 It's more a matter of all the -- the data</p> <p>16 points are considered. What's -- predominantly, what</p> <p>17 volatility is like. As -- as we've -- we told</p> <p>18 investors, it's a volatility-based fund, not a</p> <p>19 directional-based fund. So I certainly didn't</p> <p>20 consider direction as much as I really considered</p> <p>21 volatility and current market conditions and behavior</p> <p>22 and data.</p>	<p>1 Q Yes. But the changes in volatility that</p> <p>2 you're considering are incorporated into your</p> <p>3 OptionVue stress tests; are they not?</p> <p>4 A No.</p> <p>5 Q I thought we just talked about how you would</p> <p>6 test different levels of volatility in OptionVue.</p> <p>7 A You're confusing two kinds of volatility.</p> <p>8 I'm talking about a volatility often known,</p> <p>9 as I described earlier, as "historical or statistical</p> <p>10 volatility." In other words, how much might the</p> <p>11 underlying actually move.</p> <p>12 What OptionVue models is how much volatility</p> <p>13 is priced into -- for those who use models -- again,</p> <p>14 it's an open outcry pricing method -- but how much</p> <p>15 volatility is priced into the price of options.</p> <p>16 And the two can be very different.</p> <p>17 Q I understand. Okay. So when you're talking</p> <p>18 about how much volatility is incorporated into the</p> <p>19 price of options, that's an OptionVue thing; right?</p> <p>20 A Yes.</p> <p>21 Q Okay. So when I asked you before -- we were</p> <p>22 talking about what you consider in deciding whether to</p>

<p style="text-align: right;">Page 206</p> <p>1 reduce risk -- your first answer was the likelihood of</p> <p>2 any particular market movement; right?</p> <p>3 A Correct.</p> <p>4 Q Okay. And then you started to talk about</p> <p>5 volatility. And I just wanted to be clear that when</p> <p>6 you're referring to volatility in that context, you're</p> <p>7 really talking about the degree of market movement;</p> <p>8 right?</p> <p>9 A That's right.</p> <p>10 Q Okay. Just wanted to be clear.</p> <p>11 So what else, besides the likelihood of any</p> <p>12 given market movement, are you considering in deciding</p> <p>13 whether to reduce risk of a drawdown?</p> <p>14 A I'm considering other factors that I -- I</p> <p>15 think are going to affect options pricing: time to</p> <p>16 expiration, time decay, vanna flows, charm flows --</p> <p>17 other implications on the options Greeks, really.</p> <p>18 That's -- that's what we're looking at.</p> <p>19 Q What do you mean "other implications on the</p> <p>20 options" --</p> <p>21 A Well, other -- other potential movements in</p> <p>22 some of the components that -- that influence options</p>	<p style="text-align: right;">Page 208</p> <p>1 specific -- I'm using that as an influence. I know</p> <p>2 that -- I know how the options behave, and that's a</p> <p>3 description of the -- it's -- it's a Greek.</p> <p>4 It's hard to find it calculated anywhere,</p> <p>5 but I -- I -- it's -- it's reflective of the fact</p> <p>6 that, as options decay in time, their sensitivity to</p> <p>7 movement decreases.</p> <p>8 Q Okay. So where do you get that data point</p> <p>9 from? Or do you not know?</p> <p>10 A I -- I don't use a specific data point.</p> <p>11 It's not in OptionVue. It's just an observation of</p> <p>12 how options pricing behaves.</p> <p>13 Q Yes. You said you use this data point,</p> <p>14 charm. I'm asking where you got it.</p> <p>15 A No. I use the -- I wanted to introduce the</p> <p>16 concept to you as an example of the -- the things that</p> <p>17 I use in determining how options are going to behave.</p> <p>18 Q Okay. How do you use it, if you don't know</p> <p>19 where it comes from?</p> <p>20 A Well, I -- I use it because in a -- you can</p> <p>21 find models where it -- it's displayed. You can use</p> <p>22 option surfaces. I don't generally get that deep, but</p>
<p style="text-align: right;">Page 207</p> <p>1 pricing. That's really the Greeks.</p> <p>2 Q Like what?</p> <p>3 A Vega, charm, vanna, theta.</p> <p>4 Q What are charm and vanna?</p> <p>5 A They measure -- they're second-order Greeks</p> <p>6 that measure the change in the first-order Greeks.</p> <p>7 Vanna relates to --</p> <p>8 Q Where --</p> <p>9 A Vanna relates to volatility changes, charm</p> <p>10 to changes in time to expiration.</p> <p>11 Q Okay. Where do you get all these data</p> <p>12 points?</p> <p>13 A So you can -- unfortunately, OptionVue</p> <p>14 doesn't give those to me.</p> <p>15 But you can understand the -- I use them</p> <p>16 referentially, meaning I understand that the</p> <p>17 sensitivity of an option changes with time and -- and</p> <p>18 the -- the name for that is -- is charm.</p> <p>19 And so -- all I --</p> <p>20 Q Mr. Walczak, my question was where you get</p> <p>21 the charm data point from.</p> <p>22 A I -- I'm -- again, I'm not using a</p>	<p style="text-align: right;">Page 209</p> <p>1 I understand the concept of -- of the influence.</p> <p>2 Again, it -- it's a second-order Greek. And</p> <p>3 I'm sorry, I'm not an options professor to explain it</p> <p>4 to you. But I can conceptually tell you what it</p> <p>5 means.</p> <p>6 Q Yes. Actually, my question wasn't what it</p> <p>7 means.</p> <p>8 My question is: Given the fact that you</p> <p>9 said you use it to determine whether to take off risk,</p> <p>10 my question --</p> <p>11 A Yes.</p> <p>12 Q My question is where do you find the data</p> <p>13 point?</p> <p>14 A My -- my answer was that I used all the</p> <p>15 Greeks including the understanding of the second-order</p> <p>16 effects to -- to know that, as you approach</p> <p>17 expiration, these -- these impacts on option pricing</p> <p>18 are going to get stronger and stronger.</p> <p>19 And -- and I'm sorry to have used the term.</p> <p>20 It's not -- it's not a mathematical thing that I have</p> <p>21 used to graph. I don't think it's as useful to get</p> <p>22 that deep into an option's surface or anything. It's</p>

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<p>1 just -- it's a concept that suggests here's how the</p> <p>2 Greeks change over time. And I take that into</p> <p>3 account.</p> <p>4 It's probably simpler just to say time to</p> <p>5 expiration is going to change the first-order Greeks</p> <p>6 of volatility and -- and time decay.</p> <p>7 Q Okay. How do you measure how the time to</p> <p>8 expiration changes those things?</p> <p>9 A I mean, the -- the aggregate way of doing it</p> <p>10 is in the OptionVue graph. You look at the</p> <p>11 different -- you -- you can see the slope of those</p> <p>12 curves from one line to the next. And that reflects</p> <p>13 the passage of time. And you can see how the -- the</p> <p>14 Greeks underlying in the table change.</p> <p>15 Q Okay. So aside from what you can see in the</p> <p>16 OptionVue graph -- well, strike that.</p> <p>17 MR. WASSERMAN: Let's take a five-</p> <p>18 minute break and go off the record.</p> <p>19 VIDEOGRAPHER: The time is 2:21 p.m.</p> <p>20 We're off the record.</p> <p>21 (Off the record.)</p> <p>22 VIDEOGRAPHER: The time is 2:39 p.m.</p>	<p>1 reflected -- well, sorry. Exhibit 37 is a capture --</p> <p>2 I'm sorry.</p> <p>3 Exhibit 36 is a capture of that link,</p> <p>4 reflecting the article posted on the Hussman Funds</p> <p>5 website on February 6th of 2017. Do you see that?</p> <p>6 (Exhibit 36 was marked for</p> <p>7 identification.)</p> <p>8 A Yes.</p> <p>9 Q Could you take a moment to review the first</p> <p>10 few paragraphs?</p> <p>11 A Okay. Got it.</p> <p>12 Q Can you describe the general market view</p> <p>13 expressed in this commentary, or at the beginning of</p> <p>14 this commentary?</p> <p>15 A Well, outside of reading it, I mean,</p> <p>16 probably the short answer is -- is no. It's a fairly</p> <p>17 complicated point of view.</p> <p>18 Q Okay. To you, what does the language</p> <p>19 "overvalued, overbought, overbullish conditions" mean?</p> <p>20 A Yeah. Again, those are -- my</p> <p>21 recollection -- I haven't read him in a little while.</p> <p>22 My recollection is he's got some proprietary</p>
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<p>1 This begins Unit No. 6. We're on the record.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q Okay. Mr. Walczak, I've marked Exhibit 35,</p> <p>4 which is Bates stamped Catalyst_003_00245. Do you see</p> <p>5 that document?</p> <p>6 (Exhibit 35 was marked for</p> <p>7 identification.)</p> <p>8 A Yes.</p> <p>9 Q Okay. It appears to be an e-mail on</p> <p>10 February 6th of 2017 from you to Kimberly Rios; is</p> <p>11 that right?</p> <p>12 A That's what it looks like. Yes.</p> <p>13 Q With the subject line "Hussman Funds -</p> <p>14 Weekly Market Comment." What is Hussman Funds?</p> <p>15 A It's a family of mutual funds. The --</p> <p>16 whatever he is -- the CEO, John Hussman, publishes</p> <p>17 some market commentary that we would look at.</p> <p>18 Q Okay. Specifically, you provided Kimberly</p> <p>19 with a link to one such market commentary from that</p> <p>20 particular date; right?</p> <p>21 A Yes.</p> <p>22 Q Okay. And is that market commentary</p>	<p>1 stuff and -- and so those are -- those are his</p> <p>2 proprietary terms. So I can't give you what --</p> <p>3 however he defines it.</p> <p>4 Q Well, I'm sorry. "Overvalued" is his</p> <p>5 proprietary term?</p> <p>6 A Those are -- that's a phrase that he uses</p> <p>7 very specifically to -- it sounds like what he's</p> <p>8 saying to set a -- a set of conditions that he</p> <p>9 observes. And that's what he calls them. I mean,</p> <p>10 they're common words, but he uses them very</p> <p>11 specifically to refer to some analytics that he's</p> <p>12 done.</p> <p>13 Q Is it your takeaway, from reading the first</p> <p>14 few paragraphs of this piece, that Hussman thinks that</p> <p>15 the market, on February 6th of 2017, is overvalued?</p> <p>16 A Well, let me reread it with that question in</p> <p>17 mind.</p> <p>18 Well, he talks about a risk profile so, I</p> <p>19 mean, that's one of the reasons we looked at him is --</p> <p>20 is, you know, he deals in probabilities. He's</p> <p>21 thinking -- it sounds like he's thinking that maybe</p> <p>22 the risk is tilted to the downside, here.</p>



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<p>1 But I don't know his time frame and I don't,</p> <p>2 obviously, know his specific analytics.</p> <p>3 Q Yes. I'm sorry. When you say he deals with</p> <p>4 probabilities, you're talking about the probabilities</p> <p>5 of certain market movement?</p> <p>6 A Yeah. I mean, again, my recollection -- I</p> <p>7 haven't read him in a while -- is that, like a lot of</p> <p>8 traders, he's -- he's looking at sort of a</p> <p>9 distribution of outcomes over some time frame.</p> <p>10 Q Okay. And is this, again, the type of</p> <p>11 commentary that you would be looking at to evaluate</p> <p>12 the likelihood of S&amp;P market movements?</p> <p>13 A This is -- this is someone that I read from</p> <p>14 time to time. Again, as a -- as a more subjective</p> <p>15 perspective on market conditions. Yeah. So I would</p> <p>16 say sure.</p> <p>17 Q Okay. Can you pull up Exhibit 38, please.</p> <p>18 Oh, I'm sorry. Not Exhibit 38. Exhibit 37.</p> <p>19 (Exhibit 37 was marked for</p> <p>20 identification.)</p> <p>21 A Let me see. Okay.</p> <p>22 Q Okay. This is an e-mail from Mr. Rios to</p>	<p>1 described a little bit about what she was doing. But</p> <p>2 very different from what I was doing, so I didn't</p> <p>3 really ever pay close attention to it.</p> <p>4 Q Understood. What does "sell signals" mean?</p> <p>5 A I don't know what she meant by it. But I,</p> <p>6 you know, it seems like whatever short-term stuff she</p> <p>7 was looking at were giving her sell signals, I guess.</p> <p>8 Q Okay. In late January and early February of</p> <p>9 2017, do you recall how the fund was positioned?</p> <p>10 A We had been de-risking for a while.</p> <p>11 You know, I don't -- I honestly don't recall</p> <p>12 the -- very much specifics about the composition of</p> <p>13 the fund other than -- yeah.</p> <p>14 We had -- we had been de-risking as each</p> <p>15 expiration played out, trying to cut the number of</p> <p>16 positions down. I do remember that general strategy</p> <p>17 coming out of the December drawdown that we had.</p> <p>18 Q One moment please. Mr. Walczak, do you</p> <p>19 recall how the fund was positioned in July of 2016?</p> <p>20 A No.</p> <p>21 Q Do you recall July of 2016 being a fairly</p> <p>22 good month for the fund, in terms of return?</p>
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<p>1 you on January 30th of 2017; correct?</p> <p>2 A Looks that way. Yes.</p> <p>3 Q And Ms. Rios says that when she ran her</p> <p>4 "scans tonight on the technical parameters" that she</p> <p>5 set up, "it had the most sell signals since I started</p> <p>6 tracking them." What does that mean to you?</p> <p>7 A I don't know.</p> <p>8 Q No idea?</p> <p>9 A I don't recall. Kimberly did a lot of work</p> <p>10 on directional stuff, which I didn't use in my</p> <p>11 portfolio. So sometimes she liked to share, just for</p> <p>12 conversation.</p> <p>13 Q What do you mean "directional stuff"?</p> <p>14 A I -- I think you -- you understand that she</p> <p>15 did some model building of short-term directional</p> <p>16 trading systems.</p> <p>17 Q Meaning what, exactly?</p> <p>18 A Well, she did -- she built models to try and</p> <p>19 do some short-term directional trading in various</p> <p>20 instruments.</p> <p>21 I -- I didn't get very involved with it.</p> <p>22 She liked to talk about it, so we had, you know -- she</p>	<p>1 A Somewhere in the summer of 2016, I think, we</p> <p>2 had a little bit of a drawdown. I -- I really don't</p> <p>3 remember specifics.</p> <p>4 I -- I remember we did have a conversation,</p> <p>5 Jerry Szilagyi and I, at that time. And we made some</p> <p>6 adjustments to our risk parameters. But I don't</p> <p>7 remember specific P&amp;L back then.</p> <p>8 Q Mr. Walczak, do you have any records of</p> <p>9 OptionVue stress tests that you ran in 2014?</p> <p>10 A No.</p> <p>11 Q Does OptionVue record stress tests in any</p> <p>12 way?</p> <p>13 A Well, OptionVue doesn't know anything about</p> <p>14 stress tests. That's kind of my word. So I'm not</p> <p>15 aware that OptionVue saves any modeling that I may</p> <p>16 have done.</p> <p>17 Q When you say "modeling," you're referring to</p> <p>18 creating the graphs that you refer to as stress tests;</p> <p>19 right?</p> <p>20 A Yeah. I'm referring to modeling I do as a</p> <p>21 part of the stress testing process. Yes.</p> <p>22 Q And have you ever saved any of those graphs?</p>

<p style="text-align: right;">Page 218</p> <p>1 A I don't recall saving any specific graphs.</p> <p>2 Q Okay. Is there any particular day in 2015</p> <p>3 or 2016 or 2017 when you remember what the stress</p> <p>4 tests showed?</p> <p>5 A No. Well, I'm sorry. No.</p> <p>6 In 2017 maybe.</p> <p>7 Well, no. I can't say -- I can't say that I</p> <p>8 have a specific memory without having those positions</p> <p>9 and graphs in front of me.</p> <p>10 MR. WASSERMAN: Okay. We can go off</p> <p>11 the record.</p> <p>12 Jim, if you'll indulge me just five</p> <p>13 more minutes. I think I'm --</p> <p>14 MR. KOPECKY: I'll make that trade any</p> <p>15 day. Absolutely. Of course. Yes.</p> <p>16 VIDEOGRAPHER: The time is 2:51 p.m.</p> <p>17 We're off the record.</p> <p>18 (Off the record.)</p> <p>19 VIDEOGRAPHER: The time is 3:02 p.m.</p> <p>20 We're on the record.</p> <p>21 MR. WASSERMAN: Mr. Walczak, at this</p> <p>22 time I have no further questions on behalf of the</p>	<p style="text-align: right;">Page 220</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, CARL HELLANDSJO, the officer before whom</p> <p>3 the foregoing proceedings were taken, do hereby</p> <p>4 certify that any witness(es) in the foregoing</p> <p>5 proceedings, prior to testifying, were duly sworn;</p> <p>6 that the proceedings were recorded by me and</p> <p>7 thereafter reduced to typewriting by a qualified</p> <p>8 transcriptionist; that said digital audio recording of</p> <p>9 said proceedings are a true and accurate record to the</p> <p>10 best of my knowledge, skills, and ability; that I am</p> <p>11 neither counsel for, related to, nor employed by any</p> <p>12 of the parties to the action in which this was taken;</p> <p>13 and, further, that I am not a relative or employee of</p> <p>14 any counsel or attorney employed by the parties</p> <p>15 hereto, nor financially or otherwise interested in the</p> <p>16 outcome of this:</p> <p style="text-align: center;"></p> <p style="text-align: center;">CARL HELLANDSJO</p> <p style="text-align: center;">Notary Public in and for the</p> <p style="text-align: center;">District of Columbia</p> <p>21 [X] Review of the transcript was requested.</p> <p>22</p>
<p style="text-align: right;">Page 219</p> <p>1 CFTC. I thank you for your time today.</p> <p>2 MR. KOPECKY: We have no questions on</p> <p>3 behalf of the defendant. And we'll reserve signature.</p> <p>4 Thank you, Sam, for the efficiency</p> <p>5 today. Appreciate it.</p> <p>6 And thank you, reporters, for all your</p> <p>7 work.</p> <p>8 We'll see you.</p> <p>9 MR. WASSERMAN: Yes. Thank you,</p> <p>10 everybody.</p> <p>11 We can go off the record.</p> <p>12 VIDEOGRAPHER: The time is 3:03 p.m.</p> <p>13 We're off the record.</p> <p>14 (Signature reserved.)</p> <p>15 (Whereupon, at 3:03 p.m., the</p> <p>16 proceeding was concluded.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 221</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, JENNIFER HENRY, do hereby certify that</p> <p>3 this transcript was prepared from the digital audio</p> <p>4 recording of the foregoing proceeding, that said</p> <p>5 transcript is a true and accurate record of the</p> <p>6 proceedings to the best of my knowledge, skills, and</p> <p>7 ability; that I am neither counsel for, related to,</p> <p>8 nor employed by any of the parties to the action in</p> <p>9 which this was taken; and, further, that I am not a</p> <p>10 relative or employee of any counsel or attorney</p> <p>11 employed by the parties hereto, nor financially or</p> <p>12 otherwise interested in the outcome of this action.</p> <p>13</p> <p style="text-align: center;"></p> <p style="text-align: center;">JENNIFER HENRY</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

<p style="text-align: right;">Page 222</p> <p>1 James Kopecky, Esq.  2 jkopecky@ksrlaw.com  3 June 3, 2021  4 RE: Commodity Futures Trading Commission v. Walczak, Edward S.  5 5/18/2021, Edward Walczak (#4530392)  6 The above-referenced transcript is available for  7 review.  8 Within the applicable timeframe, the witness should  9 read the testimony to verify its accuracy. If there are  10 any changes, the witness should note those with the  11 reason, on the attached Errata Sheet.  12 The witness should sign the Acknowledgment of  13 Deponent and Errata and return to the deposing attorney.  14 Copies should be sent to all counsel, and to Veritext at  15 erratas-cs@veritext.com  16  17 Return completed errata within 30 days from  18 receipt of testimony.  19 If the witness fails to do so within the time  20 allotted, the transcript may be used as if signed.  21  22 Yours,  23 Veritext Legal Solutions  24  25</p>	<p style="text-align: right;">Page 224</p> <p>1 Commodity Futures Trading Commission v. Walczak, Edward S.  2 Edward Walczak (#4530392)  3 ACKNOWLEDGEMENT OF DEPONENT  4 I, Edward Walczak, do hereby declare that I  5 have read the foregoing transcript, I have made any  6 corrections, additions, or changes I deemed necessary as  7 noted above to be appended hereto, and that the same is  8 a true, correct and complete transcript of the testimony  9 given by me.  10  11 _____  12 Edward Walczak Date  13 *If notary is required  14 SUBSCRIBED AND SWORN TO BEFORE ME THIS  15 _____ DAY OF _____, 20____.  16  17  18 _____  19 NOTARY PUBLIC  20  21  22  23  24  25</p>
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



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